

UNDERSTANDING CONCEPTIONS OF LAND TENURE IN THE LAKE BABINE
NATION

by

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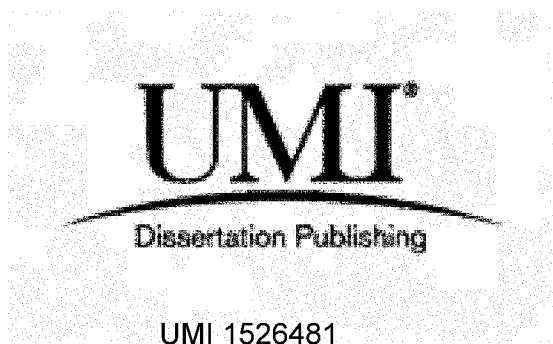
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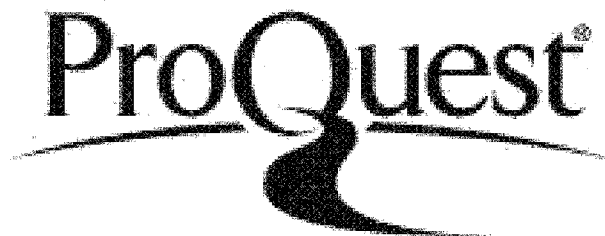


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Abstract

Understanding Conceptions of Land Tenure in the Lake Babine Nation is about evolving values and the leaders who navigate them. The traditional territory of the Lake Babine Nation (LBN) is situated on Babine Lake, east of Smithers and north of Burns Lake – a community adjacent to the Lake Babine Nation’s largest community by population. Ownership and stewardship of land in the LBN has been rapidly evolving since the imposition of the Indian Act and other government legislation in the early 20th century, forcing the Babine to adapt their social and land management techniques. With the prospect of self-governance on the horizon and pressure from the Federal and Provincial governments to adopt a system of land tenure based on private property, the LBN is at a crossroads. In this work, leaders from Chief and Council, the LBN Treaty Office, and the Hereditary Chiefs, expressed their vision for the management of the traditional territories, including traditional and western forms of ownership and stewardship, with an emphasis on collective responsibility. This work is designed to facilitate a discussion about the fundamental land values of the LBN and how they can be represented in the governance structure of a self-governing nation.

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Chapter 1: Introduction to the Research

Over the past two decades, comprehensive claims and self-government agreements have become a common pursuit of First Nations in British Columbia. Such agreements promise a greater breadth and depth of legal independence for First Nations who have been oppressed and restricted by the Indian Act and other colonial laws. For the vast majority of First Nations in British Columbia (BC), however, negotiation has been financially taxing and fruitless, making the inevitable sacrifice of traditional territory and traditional land tenure practices less palatable, and some self-governance agreements may restrict First Nations' ability to practice land tenure that their values uphold. Most First Nations in BC have been in treaty negotiations with the Provincial and Federal Governments but have yet to procure a settlement. First Nations have begun exploring governance alternatives to treaty and the Indian Act that might better represent their cultural, political, and economic needs. The Lake Babine Nation is one of those groups.

The Nisga'a treaty, the First Modern Treaty in British Columbia, set a precedent for the land tenure structure of treaties in BC when it was signed in 1999. While the Nisga'a treaty was being negotiated, the BC Treaty Process (BCTP) was developed to resolve outstanding title issues in British Columbia, and a small number of groups, such as the Tsawwassen First Nation, have signed treaties under its guidance. Other groups, such as the Westbank First Nation and the Haida, have signed self-government agreements outside of this process that have an ongoing influence on the expectations of structure of self-government. Comprehensive claims and self-government are not just tickets to cultural,

political and economic independence, however. They have allowed the governments of Canada and BC to use their place of power to direct the structure of land tenure away from the centralized, usufructuary property of reserves toward western forms of land tenure, leaving little room for traditional land tenure practices in the governance of First Nations' traditional territories. For groups like the Lake Babine Nation (LBN), who have a long history of their own unique traditional governance and land tenure systems, it seems presumptuous to expect that western land tenure is an immediate and viable alternative.

The long history of colonialism in British Columbia and Canada have impacted First Nations peoples' conceptions of land tenure, from the patriarchal re-organization of hunting grounds and the dismantling of salmon fisheries (D. C. Harris, 2001), to the development of the reserve system. Yet traditional Babine land tenure values are still strong, and western land tenure practices are not the only option for First Nations in BC. The Lake Babine Nation currently practice their traditional land stewardship and the Bah'lat's governance system, but ideologically western policy changes have further impacted the people's ability to practice it. Considering this, neither First Nations nor the Provincial and Federal governments should be confident presuming western land tenure values as the foundation of the self-governance template.

The self-government agreements and comprehensive claims that have been signed remain contentious both internally between individuals and political groups, and externally with the Canadian public, other First Nations, and other potential stakeholders in the territory. Internally, there can be political competition between political bodies with different mandates. These bodies can include, but are not limited to traditional leaders, band councils, and negotiating bodies. In the Lake Babine Nation, the major political bodies responsible for

self-government agreements are the Hereditary Chiefs, the Chief and Council, and the Lake Babine Nation Treaty Office. Individuals within the nation may have different values and stakes in the future of the Nation, depending on their political or social roles. Pre-existing issues at the individual and community level may inadvertently spill into the political arena of self-determination. Externally, there may be other First Nations in competition for overlapping traditional territories, corporate influences on economic development and land tenure policy, and ongoing governmental policy direction, which, among other factors, impact decision-making. Together, this has led to an ongoing, lengthy, and resource intense issue, sometimes fraught with political conflict.

The tension presents multiple lines of inquiry about the rationale for signing self-government agreements that must be addressed. These include: 1. Are self-government agreements being made based on paths to prosperity and community health, or out of economic necessity and coercion? 2. Are the First Nations being afforded the opportunity to make their own choices regarding their conceptions of land tenure? 3. What influence do First Nations community leaders have on the self-governance or comprehensive claim? 4. Are the traditional tools of stewardship still applicable to modern governance? 5. Are western tools of land tenure management relevant to First Nations? 6. Can First Nations successfully govern themselves under existing western governance templates?

This thesis hopes to develop discussion on these issues as they apply to land tenure. Some First Nations may feel that western systems of ownership would suit them better, while others may adhere to traditional land management methods. The diversity of cultures in British Columbia and Canada requires that the land tenure values of all First Nations be explored. Treaty and self-governance agreements are not something to be taken lightly, and

should capture the Nations' values to maximize their success. The Lake Babine Nation has passionate leadership with a vision for their self-governing future and the values that should be at its foundation. This work will explore how the land tenure values and practices of the Lake Babine Nation have evolved since early nineteenth century accounts of Babine stewardship, and how the modern leadership of the Lake Babine Nation conceptualizes land tenure. It also explores how the leaders can engage Lake Babine Nation members in their responsibilities to the traditional territories, and how the leaders themselves can develop relationships between the political bodies of the Lake Babine Nation to foster governance that respects and reinforces the fundamental land tenure values of the nation.

The Three Political Leadership Bodies

The leadership of the Lake Babine Nation has three non-mutually exclusive bodies – the Chief and Council, the Hereditary Chiefs, and the Treaty Office that are responsible for self-government agreements, which will be described here. Each body plays a unique role in representing the cultural, political, and economic wants and needs of the Nation and their membership. Though the scope of their mandates may be unique, they often intersect.

The Chief and Council of the Lake Babine Nation are the elected body of government representatives for the Lake Babine Nation, and deal with the financial and political management of the Nation. Their primary source of funding is from the Department of Aboriginal Affairs and Northern Development. The Chief Councilor of the Lake Babine Nation is the most politically powerful position within the roles and responsibilities given to Chief and Council by the Indian Act, and is a position that many of the interviewees have occupied at some time. The Chief and Council of the Lake Babine Nation is restricted by the

powers given to it by the Federal Government. With those powers, they express a degree of self-determination. The Chief and Council of the Lake Babine Nation can negotiate for self-governing power with the federal government, expressing their land tenure values through agreements relating to land management and resource development. The scope of the agreements is limited due to the disputed nature of title and evolving degrees of self-governance.

The Hereditary Chiefs are the traditional leaders of the Babine and their traditional territories, and are a very influential political body in the Lake Babine Nation. The Hereditary Chiefs are recognized by the Bah'lat's governance system, and are the body with the most direct relationship with the land, having inherited traditional land tenure rights to the traditional territory. The name-titles of the Hereditary Chiefs can indicate stewardship responsibility of a particular territory and the people that associate with the corresponding sub-clan/house group, and, many in the Lake Babine Nation see the collective body of Hereditary Chiefs as responsible for the long-term sustainability and prosperity of the land and, in turn, the Nation. They acquire these roles by inheriting them through traditional lineages, or by competing for them in the Bah'lat's (Fiske & Patrick, 2000). Many of the leaders have been, or are a part of more than one of the political bodies at various times. Many of the members of the Chief and Council and the Lake Babine Nation Treaty Office are also Hereditary Chiefs. Though the Hereditary Chiefs do have significant political influence, when they have disputes regarding land tenure policy, they have to express it through the Chief and Council. The Hereditary Chiefs are the most decentralized political body in the Lake Babine Nation, with each individual Hereditary Chief representing either their own or their Clan's interest in the land.

The Lake Babine Nation Treaty Office (LBNTO) does not have a direct role in governing the Lake Babine Nation, but it does have a direct role in establishing the land management and governance structure of the Lake Babine Nation. The LBNTO is in charge of negotiating land claims with the Federal and Provincial governments, and signed a statement of intent to negotiate a land claim through the BC Treaty Commission (BCTC) in 1994 with the support of Chief and Council (BC Treaty Commission, 2009). Negotiations are ongoing. The mandate of the LBNTO to negotiate land claims is different than that of the Chief and Council, which only has the scope of self-governance agreements, not comprehensive claims. The LBNTO has a mandate to represent the needs and values of the Lake Babine Nation as a whole, including those of the Hereditary Chiefs and the Chief and Council. The LBNTO is financially supported by the Chief and Council of the Lake Babine Nation through the BCTC, but is an independent body.

Locating Myself

I was born and raised in the community of Burns Lake, BC, a community of approximately 2000 people, 500 kilometers east of Prince Rupert and 220 kilometers west of Prince George. The community is near many reserves, and directly adjacent to two reserves of two different bands – the Burns Lake 18 reserve of the Ts'il Kaz Ko First Nation (Burns Lake Band) and the Woyenne 27 reserve of the Lake Babine Nation. As a child, I attended Morris Williams Preschool (MWPS), which is located on the Woyenne reserve. During grade school, I attended the local high school in Burns Lake, which served the broader community, including the surrounding reserves and rural areas. Throughout grade school, I kept indirect ties with the Lake Babine Nation. My mother worked as a bus driver for MWPS during this

time, and continues to be strongly involved in the Woyenne community through employment and socially. My father is one of a few local pharmacists, which, along with my mom's community involvement, has made my family involved in the community of the Lake Babine Nation.

Performing research with the Lake Babine Nation has forced me to become more mindful of my identity as an Aboriginal person. I am a member of the Raven Clan of the Tsimshian Nation. I draw my First Nations lineage through my mom, who was born and raised in Prince Rupert by my grandmother and grandfather, who are also Tsimshian, and originate from the communities of Metlakatla and Gitga'at (Hartley Bay), respectively. I am a member of the Hartley Bay Band. My dad is non-aboriginal, of Russian-German heritage. My association with the Lake Babine Nation is as an Aboriginal outsider with community ties, which have been a positive first contact for much of my work.

My personal relationship with the Lake Babine Nation has changed throughout my life. The existing family and peer relationships with the Lake Babine Nation allowed me to quickly forge my own relationships in the Nation, and plenty of support was expressed from the Lake Babine Nation Chief and Council and the LBNTO for work relating to an exploration of land tenure values. An internship with an Aboriginal organization is a requirement to complete a Master of First Nations Studies at UNBC, and in the summer of 2010 I began organizing and archiving materials from the LBNTO. Though I had no part in LBNTO policy decisions or treaty negotiation, it made me acutely aware of the continuing relevance of self-government for the Lake Babine Nation.

Introduction to the Research

Studying conceptions of land tenure in the Lake Babine Nation arose from my curiosity concerning modern political and economic values of Aboriginal peoples in British Columbia, and the evolving political landscape. I was curious about how differing values across the province have impacted Aboriginal people's efforts to attain self-government. It appeared to me that for some First Nations in BC, the BC Treaty Process was a continuation of the clash of values and power that had defined the history of Aboriginal/Colonial relations, which I will address through this thesis.

The importance of land tenure values became clearer to me after the *Nisga'a Landholding Transition Act* (2009) was passed, a law by the Nisga'a Lisims Government that signaled an ideological step toward western property ownership within the Nisga'a Nation by featuring a transition to fee simple residential property. The dramatic difference between the act and traditional land tenure structures suggests that the leadership of the Nisga'a Nation made the decision to adopt fee simple land tenure based on their changing political and economic values that have developed since signing the treaty.

The traditional property ownership and stewardship of Nisga'a territory is very different from the modern structure of Canadian property ownership, and the Nisga'a have a long history of defending their right to govern their territory independently. The cultural history of the Nisga'a initially appears contrary to the values inherent in a fee simple land tenure structure, notably individual property rights. The Act changes the ownership structure of real property from the usufructuary rooted certificate of possession to fee simple. In this instance, individuals with a Certificate of Possession for real property under 0.2 hectares can now choose to designate it fee simple. The fee simple designation allows for residential

properties to be sold to any individual, just as any fee simple property would be exchanged in BC under the *Land Title Act* of BC (Nisga'a Lisims Government, 2012), whereas certificates of possession prevented the possessors from selling their homes to non-Nisga'a members. Opening up the market in communities that were structured by the reserve system is expected to increase property values and the wealth of the Nisga'a people. The departure from the Indian Act reserve system of land tenure also sacrifices potential title to their traditional territories and accepts the governance restrictions that are inherent in the treaty template. By opening up the real estate market, the Nisga'a sacrifice some collective control over residential property within their villages, akin to Canada sacrificing control over Crown Land by selling it to an individual.

Though the *Nisga'a Landholding Transition Act* (2009) is specific to the Nisga'a, all First Nations that enter into self-government negotiations in British Columbia will have to make fundamental decisions about how, post-agreement, they will define and manage land tenure within their territory. The lack of discussion regarding land tenure policy among First Nations threatens to create a vacuum of policy and values that may be opportunistically filled by the Provincial and Federal government's models of governance and land tenure. Historically and recently, colonial policies have forced traditional leadership roles into secondary governing positions, and have weakened their land stewardship relationships that affirm their influence. The federal government in particular has pursued land ownership policy that simplifies leasable land on reserves, such as Bill C-45, demonstrating an ideological shift toward western land tenure (Government of Canada, 2012). It is becoming increasingly clear that the governments of British Columbia and Canada want First Nations to be willing to adopt individual ownership for economic development. Many First Nations

people and leaders, including many in the Lake Babine Nation, are ideologically opposed to this approach.

The decision to work with the Lake Babine Nation was made because they have the immediately present opportunity to define their land tenure values and practices in legislation, whether it is through comprehensive land claims or self-government agreements. The Lake Babine Nation has ongoing treaty negotiations, and has resulted in a recent Incremental Treaty Agreement (ITA) (Lake Babine Nation & The Province of British Columbia, 2012). In it, the Nation acquired four plots of land for the development of forestry and eco-tourism opportunities, and \$100,000 to develop these opportunities (Lake Babine Nation & The Province of British Columbia, 2012). Furthermore, the Lake Babine Nation is in the process of defining their governance structure as a part of their ongoing governance strategy. The developments in the Lake Babine Nation demonstrate the need to be clear about their capacity to maintain the land tenure values that are unique to their culture, and proceed with those values at the heart of any agreement. Treaty agreements, self-government agreements, and comprehensive land claims must all represent the First Nations' land tenure values if the community decides to pursue these options. If the fundamental land tenure values of the Lake Babine Nation have been left out of an agreement, a vacuum of political and cultural values begins to open. This vacuum could, over time, be filled by values that are not representative of the First Nation. It is paramount that the land tenure values of the Lake Babine Nation are defined as soon as possible to avoid this political vacuum. The purpose of this work is to kick-start a discussion within the Lake Babine Nation about their cultural, political, and economic values.

Modern agreements, such as the Nisga'a treaty, encourage the implementation of ideologically Western governance and ownership structures, and if the negotiating Nation believe these structures allow them to represent their unique values, then their communities are likely to decide to move in that direction. Western structures may not best represent the values of all First Nations, however. The Lake Babine Nation and its leadership must take the opportunity to consider the ideological implications of signing a self-government agreement before the decision is made for them, particularly if these decisions are contrary to the Nations' values. Overall, this thesis will answer the question "How have the land stewardship values of the leadership of the Babine changed since the 19th century, and how can these values be represented in a self-governing future?"

The Babine and the Lake Babine Nation

The traditional territories of the Lake Babine Nation are located in central British Columbia, along the shores of Babine Lake. Babine Lake is the longest natural lake and the third largest lake in British Columbia. The Babine River, which drains into Babine Lake, is a tributary of the Skeena River. As it presently exists, the Lake Babine Nation was a creation of the Indian Act, and an amalgamation of two distinct Indian Act created bands – the Fort Babine and Old Fort bands. This thesis will refer to the cultural-historical group known as the Babine. Historically, much of the social and economic relationships of the Babine people happened on an east-west corridor. To the east of Babine Lake is Stuart Lake, a large lake that formed a traditional trade corridor for the Babine and the peoples to the east; however, trade was primarily to the west with the Wet'suwet'en and Gitksan because the peoples to the west provided access to traditional trade goods from the Pacific Coast (Bouchard, 2012). The

Bah'lat's system of governance, known also as the feast or the potlatch, came from the cultural groups to the west as well, serving as a factor for long and productive trade relationships.

The Lake Babine Nation is made up of three communities that are inhabited year round – Woyenne, Tachet, and Fort Babine. There are two seasonal communities - Old Fort and Donald's Landing. Woyenne is the largest of the five communities, and, in 2006, included 614 inhabitants of the 802 who live on reserve in the Nation (Canada, 2007; Statistics Canada, 2007). Woyenne is adjacent to the Village of Burns Lake and shares much of the communities' services. The people of the Lake Babine Nation historically survived off of the bounty of salmon that run up the Babine River every year. The people continue to have a close relationship with the salmon runs, and many Lake Babine Nation members participate in harvesting the salmon in the summer. They are also hunters and trappers, and big game, including moose and deer, are significant food sources for the Babine. Many members of the Lake Babine Nation are employed in the sawmills in the area or in the service industry of nearby Burns Lake, which also provides services including a hospital and schools.

The Bah'lat's

The Nation's social order – the Bahlats, or Feasting system – is a legal, social, and spiritual form of governance. The Nation shares this system with many of the cultures and Nations to the west with which it had long-standing economic, social, and political relationships with. The most important among these relationships were with the Wet'suwet'en and Gitksan, whose traditional conceptions of land tenure and social structure

are founded on the peoples' relationship to the traditional territories and their economy. Fiske and Patrick (2000) state:

The legal authority of the Hereditary Chiefs is derived from and exercised through the balhats. It is their position within the matrilineal Clan system, symbolized by the seating order in the balhats hall, that grants them the authority to interpret customary law and to adjudicate disputes according to those laws. The names they carry confer specific obligations and privileges that are denied all others. But this is not to suggest that Chiefs exercise any form of autocratic powers, for their capacity to carry through their obligations rests on their willingness to be generous to others; to show respect to one another and to their legal institutions; and to exercise wise judgments for the well-being of their lands, Clans people, and future generations. When Chiefs fail to behave appropriately, are found guilty of criminal offences, or show a lack of self-control they lose respect and are subject to gossip (Fiske & Patrick, 2000, p. 57).

At the foundation of the Babine system are four phratrys, known in the Lake Babine Nation as Clans: Lakchibu (Bear), Likhtsemisyu (Beaver), Gilantin (Caribou), and Jilhtsehyu (Frog). Each clan is made up of smaller maternal groups referred to as House Groups or Sub-Clans. The Feast Hall serves as a meeting place for the Clans to address business that concerns the inter-clan relationships between their people, with individuals and Clans representing their own needs and interests. A Clan or house group will host a feast to address varying issues, some of which include payment of debt, giving of names, and mourning (Fiske & Patrick, 2000). The Hereditary Chiefs are seated in the Feast Hall along with the other Clan members, in a structure that reflects individuals' Clan, and social/political standing. As a matrilineal society, Clan lineage is traced through the mother. Names, which

designate political power, social standing, social roles, and stewardship over specific areas of land, are inherited along matrilineal lines of Clan and House Group. Individuals with powerful names are looked upon to represent the interests of the House Group at the Clan and national levels. House groups are represented by a Hereditary Chief who holds a specific name or title and stewards one or more of the House Territories, which are defined sections of land that make up the Clan territory.

Traditionally, the day-to-day political decisions occur at the House Group level. The Chief of the House Group has responsibility for the people in his House and the land on which they gain their sustenance. Using the House Group's wealth, those with hereditary titles can increase their political power and political prestige by feasting their name. Comparatively, the House Groups are not as prominent of a political structure as they are to the peoples to the West, though they are quite similar. Richard Daly explains the Gitksan and Wet'suwet'en land tenure structure in his book *Our Box Was Full: An Ethnography for the Delgamuukw Plaintiffs*. He writes:

Among the Gitksan and Witsuwet'en the owner of landed property is the whole House group, the *wilp* (Git.), or *yikh* (Wit.). While use rights can be allocated to the House group's separate members and their relatives, the rights entailed in ownership can be allocated only by means of succession to chiefly names and consultation with seniors. Ownership is vested in the persons of the *simgiget* (Gitksan) or *dinize'yu* (Witsuwit'en), the high chiefs (singular: *simoogit/dinize'*). Each territory has a House chief designation and a geographical name. (2005, p. 243)

Most of the leaders interviewed in this thesis are traditional leaders and have hereditary names. Their responsibilities include caring for the land to provide for the

members of the House Group, while ensuring that the land is sustainable for their long-term productivity. Traditionally, if the stewards and the people did not maintain the sustainability of the land, it would no longer be able to support them. The sustainability of the land and the living standards of the people were the direct responsibility of the House Chief. This relationship has changed over time, particularly as the people of the Lake Babine Nation were moved away from their traditional territories. As a result, the direct relationship between the land and the people is no longer as clear, which has caused a re-evaluation of the place of traditional land management practices.

The Babine have long practiced the Bah'lat's form of governance. From 1885 to 1951, however, the Department of Indian Affairs prohibited the potlatch (Miller, 2000). By the mid 20th century, the Department of Indian Affairs had begun encouraging those who lived on the traditional territories around Babine Lake to move into reserve communities around the lake. Eventually, members of the Lake Babine nation were encouraged to move to Woyenne, a reserve adjacent to Burns Lake, to take advantage of educational and labour opportunities as well as the services it provided. The impact of the prohibition of the Bah'lat's and migration away from the traditional territories would mean a changing land stewardship relationship with the territory. Eventually, the land tenure policy of the reserve system would further impact the land tenure management practices of the Babine. Since the transition, the Lake Babine Nation has continued to practice the Bah'lat's, but have also learned and adapted to western and reserve forms of ownership and management.

The Barricade Treaty, Amalgamation, and Migration

Sustained trade between the Hudson Bay Company (HBC) and the Babine people began in 1822, when the company established Fort Kilmaurs in the area adjacent to the community of Old Fort. Fort Kilmaurs was eventually shut down due to ineffective trading practices and the resilience of the existing Babine trade connections to the west (Bouchard, 2012). The HBC continued to perceive that the Babine Lake-Stuart Lake corridor could become a strategically important trade corridor, and the presence of traders in the area grew over time. Despite the appointment of the Indian Agent R.E. Loring in 1889, there was no significant governmental presence in the area until 1904 – the beginning of the Barricade disputes (D. C. Harris, 2001, p. 89). Fort Babine, one of the oldest still existing Babine settlements, did not fully embrace trade with the HBC, but was used primarily as a place for processing fish (Fiske & Patrick, 2000).

The events of the twentieth century would have a significant impact on the development of Babine land tenure values. As the salmon fisheries at the mouth of the Skeena grew in importance for the settlers, so did the pressure on the government to reduce the salmon catch in the headwaters of the Skeena in an attempt to increase the commercially harvestable stocks (D. C. Harris, 2001). The Babine River was targeted, and in 1904 the government ordered the destruction of the fishing weirs on the Babine River in exchange for fishing nets (D. C. Harris, 2001). Fishing weirs are selective river fishing structures that allowed the Babine to catch enough salmon to sustain them for the year and develop trade with their surplus food production. Unable to catch what they needed with only nets, the Babine erected a weir during the fishing season of 1905, defying the Fisheries Act. In 1906, after hearing reports of a new weir the Fisheries Officer, Hans Helgesen, ordered a group to

inspect the area with the intention of arresting those that had erected a weir. The Babine pushed the group back in resistance, and some were thrown in the river (D. C. Harris, 2001). Once both sides agreed to negotiate, two Babine Chiefs, Big George (Gwista') and Tszak William (Dewisimdzik), travelled to Ottawa with the Oblate missionary Father Coccola to settle the dispute with the Minister of Fisheries and the Minister of the Interior. The agreement concluded with the Babine giving up their weirs in exchange for nets, supplied by Indian Affairs, and securing agricultural tools for the use of the Babine. The terms of the agreement were disputed between the Babine, and the Ministries of Fisheries and Indian Affairs. By the end of negotiations, the Babine believed they had won farm implements, seed, an Industrial School, as well as the right to sell fish (D. C. Harris, 2001), indicative of the government's motivation to develop more Western labour and land tenure practices. By 1915, it had become clear that the agreement, titled the Barricade Treaty, had left the Babine in a much worse position than before the dismantling of the weirs. The people were poor and starving, and the measures that had been taken to give the Babine an alternative form of subsistence were ineffective (D. C. Harris, 2001).

The Barricade Treaty and the coercive change of traditional fishing practices continue to have an impact on the Lake Babine Nation. The Lake Babine Nation has an ongoing legal dispute with the Federal Government over the Barricade Treaty with no immediate resolution in sight. Additionally, the use of fishing nets as a replacement for fishing weirs has had significant social impacts, particularly for Chiefs, who manage the resources of their territory. Whereas the work needed for the operation of weirs involved entire Clans, only a single family was needed to operate nets. Fiske and Patrick state that:

With the use of nets, which the Indian agent allocated to household heads, fishing relations were transformed from a Clan practice to an extended-family practice that was undertaken in spatially dispersed social units... We get the impression that nets became the property of married women and that, because nets could be set without Clan permission, the social importance of big names declined... there is evidence that the value of names persisted despite the rapid social and economic changes experienced in the early twentieth century. What did decline, however, was the Chiefs' capacity to manage this resource (Fiske & Patrick, 2000, p. 112).

In addition to the Barricade Treaty, the BC government mandated the registration of traplines in 1912. Many Babine Chiefs registered traplines in an effort to declare their title over their traditional territory, despite the change from matrilineal to patriarchal ownership and management inherent in the policy (Fiske & Patrick, 2000). Male ownership of traplines would prove difficult to coincide with traditional matrilineal hereditary practices, and would go on to cause cultural confusion and tension. Traplines are still relevant today, but have caused a significant shift in the management of the traditional territories.

The social impact of a change in labor, land, and resource management that occurred in the first half of the 20th century cannot be understated. The diminishing power of the Babine Chiefs, the decreasing role of the Clan, the destabilizing of Matrilineal hereditary rights, and the poverty experienced after the dismantling of the weirs were a major first step toward dependence on the Department of Indian Affairs and a migration away from traditional sites on Babine Lake. Recognizing that the communities on Babine Lake were going to become dependent, the Department of Indian Affairs adjusted their administrative strategy throughout the mid-20th century, and amalgamated the two bands on Babine Lake –

the Old Fort and Fort Babine Bands. The administration of separate bands had become logistically difficult for the government to justify, and they were amalgamated in 1957 (Fiske & Patrick, 2000, p. 57). Historical and modern frustration with political centralization in Woyenne has led to an ongoing discussion of separation into distinct bands.

Throughout the middle of the 20th century, the Department of Indian Affairs began to entice people to move from their residences on Babine Lake to Burns Lake and the new Babine Lake mill community of Pendleton Bay, which had closer access to Burns Lake. A copper mine and new mills on Babine Lake brought many members away from the old communities and traditional lifestyles, and was yet another step toward eventual migration from Babine Lake to Burns Lake, Smithers, Prince George, and other less rural areas. Beginning in the 1950's, more Babine members were migrating to Burns Lake for secure employment in mills, the service industry, and for educational opportunities. The change in way of life had long-term cultural, social, and political implications. Currently, the vast majority of members currently reside either off reserve or in the community of Woyenne, which is not on Lake Babine Nation traditional territory. The literature supports the notion that the community of Woyenne has negative appeal, especially among the older people that had been born and/or raised on Babine Lake. As Fiske and Patrick state:

Woyenne ('The Rest of Them')... evokes a range of feelings among the residents. For some elders, who long for a permanent home in their traditional lands, it evokes a feeling that 'you are below somebody' or that 'the rest of them were nowhere.' Those who were born and raised in Woyenne do not, in general, share that perception (Fiske & Patrick, 2000, pp. 45-46).

Overview of the Research Study

In order to address the issue of a political vacuum of land tenure values in an impending self-governance agreement, this thesis attempts to answer the questions “How have Babine land tenure values changed since the nineteenth century, what are the modern values of the Lake Babine Nation as they apply to land tenure, and how do the leaders of the Nation envision the structure of land tenure of the Lake Babine Nation?” By interviewing ten leaders of the Nation, my work attempts to answer these questions. Though the leaders have individual opinions, their goals were similar – create a land management structure that respects and utilizes traditional land tenure values, incorporates collective responsibility into all land tenure decisions, and embraces dynamic change that suits and benefits the Lake Babine Nation. Semi-structured interviews were completed with leaders, including hereditary chiefs, who had or were presently serving within the Lake Babine Nation Treaty Office (LBNTO), and/or the Lake Babine Nation Chief and Council.

The four R’s – respect, relevance, reciprocity, and responsibility – guided me through my work and enriched my learning experience. I interacted with many individuals and many government bodies with the intention of creating long term, prosperous research relationships. My research is intended to not only benefit me but also the community as a whole, and I hope that the Nation can use the lessons learned as a jumping off point for future discussions of governance and land tenure. By engaging with my research I have a responsibility to represent the interviewees and their communities in an accurate and respectful way. Throughout all aspects of the research and writing process the participants were consulted to ensure that their input was not misused or misrepresented.

Interviewees for this case study were considered based on their community and leadership involvement with the Lake Babine Nation. I used qualitative case-study research methods to structure my study, which included semi-structured interviews. Ten people participated, eight of whom I interviewed in person. One participant was interviewed over the phone, and another submitted written responses to my interview questions. The interviews included six questions that were meant to stimulate discussion about the interviewee's visions of what ownership or stewardship in the Lake Babine Nation should be. Initially, a sample of participants was chosen based on their political experience in various areas, including the Chief and Council, Hereditary Chiefs, and LBNTO. Snowball sampling was then used based on recommendations that fit the initial criteria for leadership.

Through the literature review and interviewing the leaders of the Lake Babine Nation, this thesis explores the values of the leaders of the Lake Babine Nation and how they apply to the ownership and stewardship of land. I discuss how the leadership of the Lake Babine Nation can apply their visions for the ownership and stewardship of land in a self-governing environment. Finally, I suggest how the leaders can use traditional and modern land management tools to actively engage each other and the members with the ownership and stewardship of land, and set in motion a Nation-wide discussion about values and land management that I hope will benefit the Nation as a whole.

Research Limitations

The scope of this research is limited by multiple factors. First and foremost, this thesis is intended to be a discussion and analysis of conceptions of land tenure among Lake Babine Nation leaders. It is not designed to represent the conceptions of land tenure of all

Lake Babine Nation members. By choosing political leaders, I can ensure that I get in depth responses from those that have engaged with land tenure issues, and are currently guiding decisions about their land tenure future. It also affords the opportunity to discuss and make recommendations about how the leaders interact with each other, both as individuals and political bodies.

Only ten participants were interviewed, limiting the sample size. With a larger sample size, a wider range of leaders could have been included, including cultural and spiritual leadership, which might have impacted the conceptions of land tenure in the Lake Babine Nation. Including a larger number of participants from a broader range of leadership, however, would not have allowed the depth of analysis of the relationships between the major political bodies in the Nation.

Some demographics in this study were noted, but not fully explored. These include clan, age, community of residence/heritage, and gender. Further exploration of these factors and the relationship to leadership and conceptions of land tenure would have unique and interesting results. The focus on the major political bodies, however, forced these issues beyond the capacity of this thesis

Chapter 2: Literature Review

The history of conceptions of land tenure among the Babine is one that is dynamic, growing, and changing. Interactions between the Babine and other cultures, including Aboriginal and Western cultures, have impacted land tenure practices and beliefs. Even what is now considered the traditional governance body – the Bah’lats – was adopted from west coast cultures, with which the Babine shared economic and social ties. The traditional conception of land ownership has defined much of Babine life, and continues to define it today. Despite the political and economic change, hereditary names are still relevant and influential, and the Bah’lats are held regularly and are greatly respected. The staying power of the Bah’lats displays the resilience of Babine culture and values. The Indian Act, among other legislation, prevented the Babine from managing their traditional territory and its resources to their full capacity. After years of oppressive administrative policies by the Canadian Government, their approach has evolved.

The modern Western vision of land tenure has been discussed and defined for hundreds of years, and is tied to the means of production that were prevalent at the time and differed from the practices in North America. Agricultural developments in Europe allowed for more sedentary lifestyles, as opposed to the nomadic life of hunter-gatherers. With a sedentary lifestyle, defining specific pieces of real property became important, as did rights associated with the property. Political and legal thought developed over time, and ideas about property evolved to emphasize the importance of the productivity of land and individual ownership, eventually leading to the ideas of individual land rights that were born in the

seventeenth century. These ideas continue to impact and define modern academic and practical expressions of land tenure.

This chapter explores literature relating to the land tenure values that have impacted the Babine, weaving together the ideas that help to catalyze its change. Literature that describes the Bahlats, the Clans, the House Groups, land stewardship, and hereditary name-titles will provide a foundation for the thesis, giving context to the ideas presented in the interviews. Literature that provides insight into Western conceptions of ownership will be used to develop the discussion on the ideas that have impacted the Babine since the early 20th century and shaped modern government policy. Finally, land tenure literature and policy from academics, government, and First Nations will be reviewed relative to the Lake Babine Nation.

Accounts of Traditional Conceptions of Ownership

The HBC records provided the first substantial literature on the Babine. The HBC were motivated by the opportunity for a trade monopoly in the area, and established Fort Kilmaurs in 1822. The literature from this venture contributes to our understanding of traditional Babine land tenure. The relationship between the Babine and the HBC was described in a Masters thesis by Blake Bouchard entitled *The Resilience of the Babine: The Economic and Social Relations of the Babine to 1830* (2012). Using HBC records, Bouchard (2012) describes the individuals and corporate policy that impacted the Babine prior to 1830. In 1822, the HBC sent William Brown to establish a trading fort on Babine Lake in hopes of capturing the trade market from the established trade networks that already existed. The

records from Fort Kilmaurs, mostly written by Brown, exist from 1822 to 1826 with a gap in 1824, and were corporate in nature (Bouchard, 2012).

In the *Report on the Establishment of Fort Kilmaurs, Babine Country* (Hudson's Bay Company Archives, 1823), Brown notes that “[The Hereditary Chiefs] are considered the most respectable, being heads of families and possessors of particular tracks of country, which they claim an exclusive right to” (Hudson's Bay Company Archives, 1823, p. 1), and that the same principal men have the responsibility of managing their lands’ resources. In the 1826 *Report of the Babine Country and Countries to the Westward*, Brown states that “Hou chite tsk Kie’s (sp.?)... lands are very extensive, and are the best stocked with Beaver of any in the vicinity in the Lake – of which he is particularly careful neither killing too many himself nor allowing any to do so” (Hudson's Bay Company Archives, 1826, p. 6). Brown recognized the power that the Chiefs had over resource distribution and sustainability stewardship, and hoped to use his knowledge to develop an HBC trade monopoly. As Bouchard explains, the HBC and other traders had made successful attempts at trading with the people of the area, but were unable to develop a monopoly similar to those that existed to the east of the Rocky Mountains. Frustrated by his lack of success developing a monopoly, Brown began to realize the strength of the economic and social ties to the west with other Potlatching peoples. Bouchard argues “The efforts of the overland fur traders to alter traditional economic networks to their advantage did not succeed in these early years” (2012, p. 26). The HBC was temporarily set back, not having developed a full understanding of the Babine economic way of life.

Though they are important as a historical resource, the HBC accounts only serve as a minor and surface level investigation into the conceptions of Babine land tenure. A second

settlement group important to this discussion is the Catholic missionaries. They began to arrive in the Northern Interior in 1842 (Coccola & Whitehead, 1988). Fathers A.G. Morice and Nicolas Coccola had the biggest impact on the Babine, arriving in the late 19th century. Morice was dispatched to the Stuart Lake-Babine area in 1885, serving there until 1895. The book *Will to Power: The Missionary Career of Father Morice* explains that Morice was sent by the Missionary Oblates of Mary Immaculate to oversee the area (Mulhall, 1986). During his stay, Morice ignored many of his religious duties as a priest, and many of his decisions were made in an effort to gain social control. In one of his most extreme actions, Mulhall states that Morice enforced the outlawing of the potlatch (Bah'lat) – a reversal of his Oblate's policy – because it was a component of Babine social life that he could not control, and would have prevented him from becoming the priest-king that he envisioned himself to be (Mulhall, 1986). Beginning with Morice, the Potlatch ban was enforced until 1951, forcing the practice underground (Tennant, 1990). The restraint on the Potlatch affected Babine Social life and land stewardship immeasurably.

While Morice provides insight into Babine Society, Fiske and Patrick (2000) express challenge this information, stating

He attempted to interpret female proscriptions in the context of Roman Catholic and Judaic practices; he manipulated traditional law (and his interpretations of them) according to his own interests in power struggles with traders and other frontiers-people; and he had an intellectual agenda to advance with regard to presenting the Yinkadinee as an imitative people whose cultural and intellectual accomplishments were inferior to those of their western neighbours (Morice 1892, 1893). However, much that he says with regard to territorial laws (Chiefly concerning prerogatives and

Bah'lats protocol) has been corroborated by elders, and his linguistic achievements have been, to a large extent, substantiated by contemporary scholars (Poser 1994, personal communication) (Fiske & Patrick, 2000, p. 125).

Until the work of modern anthropologists, Morice's work was a large component of the foundation of literature on the Babine despite his questionable interpretations. His work continues to be relevant, and Fiske and Patrick state that academics of the mid twentieth century relied primarily on his work when studying the Babine (Fiske & Patrick, 2000).

Another significant Oblate priest in the area during the early 20th century, Father Coccola, took a less malicious approach to spreading the gospel, and even supported the Babine in their negotiation of the Barricade treaty. Coccola adhered to the Oblate and Governmental policies of the time, but also seemed to have the physical and spiritual lives of the Babine in mind. Coccola, hoping to prevent the government from strangling the lifeblood of the Babine – the salmon run – went to Ottawa with Babine Chiefs to negotiate the Barricade treaty (Coccola & Whitehead, 1988). Though he may not have totally understood the implications of removing the Barricades, Coccola and the Babine managed to negotiate for fishing nets, amongst other things, in exchange for their removal. Eventually, as mentioned earlier, the change from barricades to nets lessened the importance of the Clan because it only took the nuclear family to operate fishing nets, rather than the larger social unit of the Clan, thereby changing the structure of resource management and land ownership and stewardship as it relates to fishing sites. The farming implements also speak to the labour and cultural values that the government wanted to instill, hoping to further separate Aboriginal peoples from their traditional way of life. The impact of these changes cannot be understated, considering salmon is the most important resource of the Babine.

Coccola did go on to impact Babine land tenure values indirectly as well. He would serve as the Principal of the Lejac Indian Residential School from its opening in 1922 to 1934 (Coccola & Whitehead, 1988), which many Babine children were forced to attend. Attending residential schools, as John L. Tobias states in his article *Protection, Civilization, Assimilation* (Miller, 1991) was of

Vital concern to the government, for education of the Indian Child was a keystone of the civilizing process the reserve system was to perform... Residential and industrial schools, which removed the child from the detrimental influence of uncivilized parents and Indian traditions, were regarded as better instruments of government policy (Miller, 1991, p. 136).

The Indian Residential School system greatly impacted the Babine, separating the children from their families and their homes, disengaging them with the land that they would have been learning to steward.

The values that were imposed upon children in the residential school system, such as an appreciation for individual property through farming lifestyles and wage labour, were the same values that the government of Canada was hoping to instill in all status Indians. For example, the location ticket was a way to direct the Indian toward private property and enfranchisement – a personal choice to give up any special status to become civilized, and enjoy the freedoms and responsibilities of other Canadians. Tobias states:

“The new [location ticket] policy stipulated that the superintendent general have the reserve surveyed into individual lots. The band council could then assign these lots to individual band members. As a form of title the superintendent general would then give the band member a location ticket. Before an individual received a ticket he had

to prove his suitability in the same manner as under the earlier legislation. On passing this first test and receiving his location ticket, the Indian entered a three-year probationary period during which he had to demonstrate that he would use the land as a Euro-Canadian might and that he was fully qualified for membership in Canadian society. If he passed these tests, he was enfranchised and given title to the land. If all band members wished, they could enfranchise in this way.” (Miller, 1991, p. 132)

The Canadian government believed at the time that enfranchisement would be so compelling to progressively minded Indians that they would choose to leave behind their special status and their community to pursue a live in Canadian society. The lack of Indians that were pursuing enfranchisement eventually forced the government of Canada to pursue other policy options if they wanted to, among other things, ensure that Indians in Canada would adopt western private property land tenure values. The impact of these policies was primarily felt in the east, because the colonial reach of the Federal Government was not as present in BC during this period.

After World War II, the government made it mandatory for the Babine to comply with trapline registration laws where they would have had traditional resource rights. As Fiske and Patrick explain, many Babine chiefs registered traplines to prevent the government from taking away their claim to title (2000). The traplines would inevitably become property of the male line, passed from father to son, akin to western ownership practices. This went against the hereditary lines, which were traditionally maternal, leading to conflict regarding current land stewardship and political structures. This confusion has had an ongoing negative impact.

Diamond Jenness, a high profile anthropologist famous for his work amongst the Inuit, produced multiple ethnographic works on the Babine and Wet'suwet'en in the early twentieth century, including *Carrier Indians of the Bulkley River* (1943), and *Myths of the Carrier Indians of British Columbia* (1934). His work was the first academic effort to record the Carrier/Babine land tenure structure, and is still a pivotal piece of literature.

Unlike the HBC and missionaries that came before him, he had an eye for the complexity of non-western social structures. In *Carrier Indians of the Bulkley River* (1943), Jenness outlines one of the foundations of Babine social structure – name-titles. From there, he examines their role within Clans and sub-Clans. He states,

Among these surrounding peoples the Bulkley Indians, like a many tentacled cephalopod, had wandering feelers gathering sustenance that enriched the community's life. Yet there was no central nervous system to coordinate the movements of the feelers and to assimilate or reject their booty, no ruling Chief or established council to control the actions of the different families and govern their relations with the outside world. Like other Carrier subtribes, the Bulkley natives were divided into a number of fraternities or phratrys, each intimately associated with the others, yet politically independent. The phratrys assembled and lived together at the same fishing places each season, they joined in common feasts and ceremonies, and they united at times to repel a common danger; but they all owned separate hunting territories to which their members repaired for the winter months, and they associated at will with foreign peoples even when these might be hostile to others of their countrymen. Since there was no regulation of foreign intercourse and trade and no hindrance to marriage outside the community, foreign ideas and foreign customs

could take root in one family or phratrys without permeating the others. It was only the constant association, the ties of kinship and marriage, the uniform dialect, and the pressure of common interests that counteracted the strong centrifugal tendencies and knitted the phratrys into a definite, though headless, unit justifying the name of a subtribe (1943, p. 481).

Jenness' descriptions of traditional social structures are considered largely accurate and help to develop an understanding of the transition that has occurred since the early twentieth century. Changes in the centralization of First Nations governance structures are particularly striking, with the modern Lake Babine Nation moving to an extreme centralization under the Indian Act. In the quote, Jenness suggests that those with name-titles did not have as much power-over as western leaders have, describing the clan units as "headless," and that there was "no ruling chief or established council." This is an overstatement, and likely relative to the power of western sovereigns. The clans did in fact have heads and spokespeople. Furthermore, historical literature as well as my interviews suggests that many people, including members of the Lake Babine Nation, may interpret the traditional powers of Hereditary Chiefs differently. Rather than being an all powerful sovereign, they were primarily social leaders to their family groups and individual stewards with the collectively recognized power to manage the land. Their political authority, as presented in western politics, has likely been overstated and misunderstood by western political institutions. In my interviews, this theme is raised in discussions about encouraging shared responsibility, which nearly all interviewees addressed as important. Also, the political independence of the phratrys and sub-Clans suggest that the modern concept of

Nation is a conceptually distant one for traditional First Nations social structures, and may be closer to the phratry than what we understand to be a four-Clan nation.

By the end of the twentieth century, it was clear that there had been a fundamental shift in Literature about the Babine. Though Morice and Jenness continued to provide the Anthropological foundation for academic work on the Carrier and Babine, academics such as Hudson and Kobrinsky became more specific in their ethnographic research during this time, especially investigating the economy and potlatch of the Babine. Hudson provides an examination of Carrier life in communities on Stuart Lake – not far from the eastern most communities on the Babine Lake – explaining the impact labour and material changes have had on social structure. He states:

What at first glance appears to be an archaic economy and society coexisting with modern industrial operations is revealed to be a necessary adaptation by the Carriers to their marginal position with respect to capitalism. Rather than dissolving Carrier economic activities and social institutions, capitalism has strengthened the bush economy and its attendant ties of reciprocity (Hudson, 1983, p. 1).

Commodity production and wage labour have not led to the dissolution of traditional Carrier economic pursuits. However, the types of resources and technologies used to obtain them have changed, and these material changes have led to changes in social organization (Hudson, 1983, p. iv).

Hudson's description of the Stuart Lake Carrier people mirrors the Babine in that they both underwent similar types of changes in trade and labour, but have both continued to be strongly involved in the bush economy. It is important to note that Hudson does not necessarily mean to say that capitalism is the path to cultural revitalization. Rather, he is

suggesting that capitalism encouraged the marginalization of Carrier labour. With financial support from social assistance, many carrier people could partake in economic activities that were not marginalizing. The bush economy of hunting, fishing and trapping kept individuals tied to their culture and community, giving the people more meaning than industrial or service jobs. Hudson's explanation is relevant because it outlines the ongoing resilience of Babine values, contributing an answer to why the Babine and other rural First Nations groups continue to hold onto traditional practices and land tenure in spite of the changing modes of production.

Kobrinsky (1973) offers an in depth look into the structure of the Potlatch, with a thorough description of the seating arrangement. He states, "Perhaps the ultimate sign of aristocratic status among Carrier adults is the possession of a recognized – as it were, "reserved" seat at the potlatch celebrations. This is tantamount, in turn, to the possession of an honorific title" (p. 110).

Much of his ethnographic work on the seating structure of the Potlatch is compared to the work of Jenness (1943). A noteworthy point that both Kobrinsky and Jenness make is that the seating format of the Potlatch reflects the hereditary nature of their social system. The Chiefs with the most distinction sit at the centre rear, traditionally elevated, while their heir apparent sits immediately ahead of them in the second row (Kobrinsky, 1973). This is so the heir apparent can learn to represent and steward his future people and land. Between the times of Jenness, Kobrinsky, and the present, insofar as my research went, remarkably little has changed for a cultural group under so much external pressure to change, in terms of supporting the roles that the Hereditary Chiefs play in the ongoing evolution of Lake Babine Nation land tenure values.

In addition to the resilience of Babine values, Kobrinsky (1973) emphasizes the dynamic change of the Babine governance and land tenure structures by quoting Jenness (1943). Kobrinsky writes that, in spite of the significant influence from peoples of the west,

This does not mean... that the Bulkley natives slavishly copied and borrowed from their Tsimshian neighbours. Their own system, though extremely fluid, was so full of vitality and life that it was capable of absorbing numerous elements from abroad without impairing its essential vigor (Jenness 1943: 495) in (Kobrinsky, 1973, p. 104).

This supports the notion that the Babine have adapted their governance and land tenure for their own needs rather than simply giving in to other cultural pressures. The notion of keeping strong values while also adapting to social and cultural change will come to define the history of Babine land tenure.

After describing the resilience of the Babine social structure, Kobrinsky discusses the impact of the long-term stewardship of the land that comes with a name-title. He says that stewardship is just as important in the present as it is in the future. Individual's traditional roles of responsibility for land and people mean that personal material wealth is shared while balancing the long-term health of the land. Without values of stewardship, an individual could not be held to the level of accountability that is necessary for those who live off the land in the future. Furthermore, Kobrinsky's statement supports the notion that the Babine are able to adopt other culture's land tenure policy without sacrificing their cultural values, something this thesis advocates the leadership of the Lake Babine Nation should consider.

Together, Hudson (1983) and Kobrinsky (1973) offer a perspective on the Babine that had yet to be fully explored by anthropology – that First Nations peoples were dynamic,

socially and geographically changing over time in response to ongoing developments, both internal and external. Furthermore, they challenge the notion that culture, and its relevance, are stuck in time. By adapting and reinventing themselves, culture can remain strong and relevant. Hudson (1983), by describing the labour and material changes that the people of Stuart Lake took part in, argues that First Nations people will pursue meaning, relevance, and community when making economic and political decisions. The Lake Babine Nation's strong connection to the land will not suddenly and fundamentally change in the face of western forms of ownership and industrial capitalism because traditional land tenure provides lasting cultural and community meaning.

It was not until the 1990's that the literature of the Babine truly incorporated the voice of members of the Lake Babine Nation, as demonstrated by the book *Cis Dideen Kat* (Fiske & Patrick, 2000). The *Cis Dideen Kat* project was funded and supported by the Lake Babine Nation itself, differentiating it from previous literature. The project incorporated direction and leadership from the Lake Babine Nation, including a host of Lake Babine Nation members who served as researchers, interviewers, project managers, administrators, and knowledge holders that gave their knowledge to both the content and direction of this book (Fiske & Patrick, 2000). *Cis Dideen Kat* (Fiske & Patrick, 2000) is just as much a summary of the Lake Babine Nation way of life and their changing relations as it is a declaration of self-determination, and because of that, forms a cornerstone of the literature on traditional forms of ownership of the Babine.

Fiske and Patrick (2000) set out to describe the way of life and the relations of the Lake Babine Nation from traditional to modern times. In the same way this thesis has, the authors research the works of anthropologists, priests, and HBC administrators to compare to

the knowledge of the elders. With this, the authors create a portrait of Babine social organization, governance, values, and spiritual beliefs.

There is, however, a lack of discussion about land tenure policy in *Cis Dideen Kat*. Patrick and Fiske (2000) make it clear that the Babine are resilient in their traditional ownership and stewardship law and continue to fight for their right to self-determination, and that a history of colonization has impacted the Babine social structure. They do not, however, explore in depth how western conceptions of land tenure have impacted and changed the Lake Babine Nation. The strength of the culture of the Lake Babine Nation is undeniable, but history also shows that they have a willingness to adapt other methods of social and political organization into their own when it benefits them. *Cis Dideen Kat* does not, in an in depth way, account for the role that western conceptions of ownership may have in their future, and does not address whether or not the people of the Lake Babine Nation will embrace it, or how it could potentially negatively or positively impact the Nation as a whole. The authors write:

At present, the Babine are meeting over questions concerning how they wish to organize their territorial claims. Like other First Nations, they have the option (1) of advancing argument for traditional land tenure (i.e., land held by the Hereditary Chiefs on behalf of all); (2) of seeking, as have the Nisga'a, a claim to communal lands to be managed collectively under the stewardship of Hereditary Chiefs; or (3) of negotiating a new and unique arrangement as per the interests of the discrete communities bound to specific reserve lands (Fiske & Patrick, 2000, p. 170).

The Nisga'a treaty, which was signed after *Cis Dideen Kat* was published, has changed the political landscape, making option (2) less clear. Nisga'a land tenure policy such as the *Landholding Transition Act* has moved the nation away from communally held land,

and Hereditary Chiefs, within the new Nisga'a Lisims government, are represented by a body that has no legally binding power. The initial Certificate of Possession real property ownership structure, and the adoption of individual residential property ownership and a form of restricted fee simple property will change the structure of Nisga'a land ownership, and has likely changed the discussion of what is possible and ideal within a modern treaty. Option (3) is the option in which a community specific approach could be taken, and could include a blend of traditional and western conceptions of land tenure could be pursued. Current agreements that will be discussed later, such as the Westbank First Nation, is an example of this approach. These approaches, like the treaties that have been signed in BC, appear to favour western land tenure practices.

The work of Wendy Aasen (1993) provides a very relevant question to this thesis and the Babine – how can the Carrier incorporate the potlatch into the governance models of a future self-governance agreement? As the political structure that upholds the traditional stewardship model of land tenure, it is an important aspect to consider. Aasen completed this thesis in 1993, the year that the BC Treaty Commission began, and she was motivated by government requests for governance-structure plans that reflect traditional Carrier governance. Like this thesis, governance values are explored, however, she determines that the potlatch system is incompatible with modern governance structures and the political goals of Carrier leaders. Aasen (1993) emphasizes a separation of the Bah'lat and political governing bodies, and recommends that elected Clan members should form the political governing body and include traditional values. She states: "The Carrier people do not want DIA government. They do not want potlatch government or rule by Hereditary Chiefs. They

do want government based on traditional values, customs, and practices” (Aasen, 1993, p. 166).

Throughout the historical literature, the values of the Lake Babine Nation become clear. The Babine have a history of stewardship for the long-term benefit of the land and their people, as was described in the HBC records. The importance of political independence, both internally in the Bah’lats and externally with other Nations, is clear in Cis Dideen Kat and Jenness’ work. The history of the Barricade Treaty highlights the power of collective decision-making. Kobrinsky shows how these values are resilient in his description of the modern lifestyles of the Carrier. These values, as we will see, have carried through to the present conceptions of land tenure among the Lake Babine Nation.

Philosophy of Western Conceptions of Ownership

Real property, as it is currently understood in Western law and culture, was largely influenced by John Locke’s *Two Treatises on Government* (n.d.). Though the lineage of individual property law can be traced back before the time of Locke, his discussion of property and property rights had a tremendous impact on conceptions of property in general and the colonizer’s perception of Aboriginal people’s land tenure practices specifically. Agricultural development and the new age of colonization meant that real property law was no longer suitable for the needs of the colonizers. In 1689, John Locke wrote the *Two Treatises of Government* (n.d.), the second of which outlines Locke’s justification for property. It became a defining work of this dramatically changing time. He proposed that ownership is derived from labor input into land, and the owner is ultimately the individual

that is able to get the greatest output from the land. Furthermore, he states that individual property rights are fundamental to government accountability (Locke, n.d.).

The narrative that the productivity of land should always be maximized strongly impacted the European colonial consciousness. As John Locke saw it, the establishment of the American colonies was a perfect opportunity to establish the developing western land ownership philosophy. In the Colony of Carolina, Locke attempted to establish land ownership minimums for productive and engaged citizenship (Arneil, 1996). Though Locke's land ownership policy did not take a direct foothold in the Americas, the idea of the necessary development of land had established a colonial foothold. The European perception that the land in the Americas had not been developed to its most productive state served as a convenient justification for the colonization of the area. Locke states:

There cannot be a clearer demonstration of any thing, than several Nations of the Americas are of this, who are rich in Land, and poor in all the Comforts of Life; whom nature having furnished as liberally as any other people, with the materials of Plenty, i.e. a fruitful soil, apt to produce in abundance, what might serve for food, raiment, and delight; yet for want of improving it by labour, have not one hundredth part of the Conveniences we enjoy: And a King of a large fruitful territory there feeds, lodges, and is clad worse than a day labourer in England (Locke, n.d., p. 37).

Believing that labour input gave value to land and ultimately led to ownership, Locke reasoned that greater output from the same amount of land was of greater good to humanity as a whole. The perceived inefficiency of the hunter-gatherer lifestyles and superiority of European land tenure made the colonization of property systems in the Americas justifiable in the eyes of the colonists.. Tully states:

Locke defines property in such a way that Amerindian customary land use is not a legitimate type of property. Rather, it is construed as individual labour-based possession and assimilated to an earlier stage of European development in the state of nature, and thus not on equal footing with European property. Amerindian political formations and property are thereby subjected to the sovereignty of European concepts of politics and property. Furthermore, these concepts serve to justify the dispossession of Amerindians of their political organizations and territories, and to vindicate the superiority of European, and specifically English, forms of political society and property established in the new world. In using these concepts in this way Locke was intervening in one of the major political and ideological contests of the seventeenth century (1993, p. 139).

The oppressive assumptions about property that Tully describes continue to impact Aboriginal peoples today, including the Babine. The Babine have struggled to have their land tenure systems recognized due to this long misunderstanding of their established legal, political and social structures. These assumptions have led to the western belief that the individual right to property is universal. This should not be considered the case. The Babine, for instance, have individual stewards of property with collective support, the responsibility of which is passed on hereditarily, through the Potlatch. The stewards of the land hold their position for much of their lives, and manage the land in the best interest of their extended family and immediate community. Stewardship and ownership are concepts that are distinct from each other. By transforming the concept of land tenure into something that everyone had the right to acquire as property, the colonists changed property law forever. Individualism is at the foundation of modern economic theory, such as liberalism, which

emphasizes that the individual should be allowed autonomy in making his or her own decisions. This approach can be at odds with the traditional land ownership and stewardship of Aboriginal peoples.

The colonial land tenure philosophy can be understood by examining the transforming relationships between the Colonists and Aboriginal people as expressed in the Royal Commission on Aboriginal Peoples (RCAP). RCAP was initiated after Aboriginal activism began to gain steam in the early 1990's. The failed Meech Lake Accord and the standoff in Oka, Quebec prompted the Federal government to examine Canada's relationship with Aboriginal peoples (Miller, 2000). The report is structured by 4 distinct stages of the relationship, including *Separate Worlds*, *Contact and Cooperation*, *Displacement and Assimilation*, and *Negotiation and Renewal* (Canada. Royal Commission on Aboriginal Peoples., 1996), which complement our understanding of the history of the Lake Babine Nation. In *Separate Worlds*, Europeans had a fundamentally different history than the Aboriginal people of Canada, and it is no surprise that their land tenure structure was remarkably different than any First Nations groups in Canada. The Babine, like other First Nations, had systems of land tenure that were developed independently of European influence, such as the Potlatch (Bah'lots). These differences, however, would come to be misunderstood by colonial powers as inferiorities.

In *Contact and Cooperation*, the RCAP (1996) describes the new relationships between Aboriginal people as one of equals, where trade and warfare happened based on a largely equal balance of power and mutually respected sovereignty. The fur trade, for example, was a mutually beneficial relationship, where the Aboriginal people were able to acquire goods such as metal tools and guns in exchange for their knowledge and ability to

access furs. Military alliances were formed, particularly in eastern Canada, and First Nations groups were able to choose, as equals, whether they would support the French or English. In British Columbia, this period occurred in the early nineteenth century, and for the Babine involved the new presence of the HBC. As described earlier in this chapter, the Babine showed their power and independence by exercising their ability to maintain trade relationships with their traditional trade partners rather than accepting the trade monopoly the HBC was attempting to establish.

During *Displacement and Assimilation*, policy was made to displace and assimilate Aboriginal peoples. Diseases such as smallpox, growing numbers of the settler population greatly swung the balance of power away from Aboriginal peoples. The colonies of Canada, which eventually became the country of Canada, were able to create laws specifically for Indians that restricted their ability to practice their culture and traditional economies. As described previously by Tobias (Miller, 1991), early Indian policy in Canada was designed to transform the Indians of Canada into individuals that espoused western values, and steps were taken to impose or entice First Nations peoples into fee-simple owning agrarian or wage labour lifestyles. The Canadian government hoped that First Nations peoples would develop the land where new settling farmers had not yet arrived, and begin to participate in the politics and economy of the country that gave them the right to own the land. The residential school system implemented this vision on Indian children, which was enacted across Canada. The residential school system brought together colonial economic and moral values, taking an accommodationist approach by having Churches administer the program. These policies, express the foundation of colonial and western values that continue to exist in land tenure policy in Canada.

In some ways, British Columbia followed a different colonial trajectory than eastern Canada due to delayed contact and a distinct policy environment. Whereas treaties had been signed elsewhere, BC continued to have an outstanding land question. Cole Harris states:

White immigrants and settlers in British Columbia in the 1860's took it for granted that the land awaited them. There were protracted arguments about the terms by which the government should make land available but, with rare exceptions, the proposition that almost all provincial land was unsettled and unused – or used slightly in ways that deserved to be replaced by more intensive, modern land uses – was not debated... They [Indians] had legitimate claims to their principal settlement sites, also to their burial grounds and small cultivated patches, but not to much more. Their more extensive land uses, such as they were, should give way – were bound to give way – to the intensive land uses associated with settlers and civilization. The displacement of one by the other was inevitable, as the worldwide reach of Europe had shown. (2002).

The colonial perception of the inevitability of western values impacted the Babine much like it did to First Nations elsewhere in British Columbia. By the early twentieth century, reserves in BC were relatively small, and the Babine were struggling with poverty because of their inability to practice their traditional economy. Farming economies were encouraged, as was moving to centres where there was a wage labour economy, such as Burns Lake. There was even a reserve created for Lake Babine Nation members adjacent to Burns Lake, an area that was not on the traditional territory of the Lake Babine Nation. That reserve, Woyenne, is the largest reserve by population in the Nation. *Displacement and*

Assimilation has left a lasting impression, and the poverty and disempowerment that it caused are still evident today.

Elsewhere in Canada, a similar philosophy was utilized after the North West Rebellion in 1870 to reinforce western values for the Metis, another Aboriginal people. Scrip – a credit for land – was given to the Metis in the Manitoba Act in return for surrendering their collective land title rights. It was hoped that the Metis would use their individual property as a means to develop socio-economically, and that the Canadian government would no longer have the responsibility for supporting them like they did the Indians of Canada. Unfortunately, much of the land was sold to land speculators before it was received, and the Metis were left with little wealth and no land base (Miller, 2000). Though the scrip was never fee simple property, it stands as an historical example of the potential disaster that changes in land tenure can bring when there is no collective title.

The White Paper of 1969 (Department of Indian Affairs Canada, 1969) was a more calculated attempt to assimilate Indians by removing the Indian Act and the special status of Canadian Indians. The rationale for *The White Paper* was to remove the social and economic development barriers to Indians that were evident within the Indian Act. In terms of land tenure, the White Paper would have transformed the centrally controlled, certificate of possession system of reserves into fee simple land by dismantling the entire reserve system. It was reasoned that the Indians in Canada, then, would have the same opportunities that other Canadians would have, including more opportunity to develop land and wealth (Department of Indian Affairs Canada, 1969). Like Metis Scrip, Indians in Canada would not have acquired collective title, such as that which treaty or other comprehensive land claims would provide, nor would they have acquired the power to shape their own land tenure law.

The reaction from Aboriginal people across Canada was very negative. The White Paper would remove provisions that formed their social safety net, such as medical, education, and social funding. Despite suggestions that *The White Paper* would provide more economic and social opportunity than the restrictive Indian Act, it was feared that a quick removal of the act would leave a social support vacuum. The long history of oppression of Aboriginal peoples in Canada and the sudden removal of even a meager social safety net would likely spell disaster for which the envisioned opportunity of equal status could never compensate. After the political disaster of the White Paper, it became more evident that approaching Aboriginal land tenure on a conceptual pendulum of western assimilation and restrictive reserve practices would not satisfy the land tenure needs of First Nations in Canada.

The idea that Indian socio-economic development could occur within the existing policy parameters had grown outdated after the many failures of Indian Policy in Canada throughout the nineteenth and twentieth centuries. Policies such as the White Paper, which attempted to recognize the ineffective policy by removing the special relationship Indians had with Canada, may have inadvertently begun the fourth stage, *Negotiation and Renewal*, by bringing Aboriginal issues into the public eye and catalyzing Aboriginal activism (Canada. Royal Commission on Aboriginal Peoples., 1996). *Negotiation and Renewal*, as RCAP describes it, is a current, ongoing stage that has seen further recognition of Aboriginal peoples and their interests, including Aboriginal rights and title, both through political movements and Supreme Court decisions. Though *Negotiation and Renewal* has brought Aboriginal issues to the forefront this does not mean that western land tenure philosophies do not form the foundation of current policy and agreements between Provincial and Federal

Governments and First Nations, and the risk of moving backwards toward a different form of colonialism is present.

Developments in treaty processes, policy change in the Indian Act, and academic debate have all reignited discussion about the merits of the role and structure of property rights for Aboriginal people. Two of those academics are Tom Flanagan and Manny Jules, who helped catalyze a reconsideration of the reserve system of land administration. Since coming to power, the Conservative Party of Canada has introduced legislation that subtly shifts reserves toward individual ownership, showing the western continuity of land tenure policy in Canada. For example, Bill C-45, formally known as the *Jobs and Growth Act, 2012* (Government of Canada, 2012), expands a band's power to lease a greater amount of reserve land. After the introduction of the bill, there was considerable backlash, most notably acting as a catalyst for the Idol No More movement. Frustration with changes to land tenure administration in Bill C-45 was rooted in a lack of First Nations consultation, and the threat that an increase in leasable band territory would lessen the power of traditional stewards of the land over their traditional territory.

Flanagan and Jules have since distanced from the Conservative Party of Canada, but have been no less influential in the academic debate on Aboriginal land tenure in Canada. The book *Beyond the Indian Act* (Flanagan, Le Dressay, & Alcantara, 2010) aims to prove that the current land administration structure negatively impacts the socio-economic potential of Aboriginal people in Canada, and that a well strategized, community focused approach to private property that emphasizes self-determination will benefit Aboriginal people. The authors describe the history of the hypocritical and contrary government policy that encouraged Indians to enfranchise themselves to acquire property, while administering a

system of patriarchal usufructuary rights. The authors also state that their conceptions of property are different than the modern foundation of property as presented by Locke.

Flanagan et al. states,

Our approach to property is not rooted in the Lockean idea of natural rights. We do not think it is possible to deduce complex legal institutions from philosophical abstractions about human nature. Rather, we draw inspiration from philosophers such as David Hume, John Stuart Mill, and Friedrich Hayek, who saw property rights in a historical context, evolving through time along with other social institutions” (2010, p. 16).

The authors believe that the Torrens title system is one that evolved through time to become culturally relevant for Aboriginal people in Canada. The authors recommend it be used as the foundation to their suggested *First Nations Property Ownership Act*.

They suggest that the public listing of title in the Torrens system is similar to the public recognition of ownership in the potlatch system, as opposed to the deed, which does not make transactions public. They state that the modern Torrens system is the most efficient, secure, and open form of tracking fee simple ownership. They write:

This legislation will allow property markets to work on First Nations lands as they do everywhere else in Canada. First Nations could choose to provide indefeasible title to current individual landowners, such as those who possess certificates of possession or traditional or customary holdings, or even lessees... Individual property rights would be registered in a Torrens system, and those with indefeasible ownership would have a certificate of guaranteed title subject to the exercise of jurisdictions on First Nations lands. Once the market becomes comfortable with First Nations governance, property

markets should work as well on reserve as they do off. The legislation would be completely optional for First Nations. The First Nation could choose to participate through an acceptable demonstration of community support similar to passing a land designation under the Indian Act, a land code under FNLMA, or a self-government or treaty agreement. Moreover, the First Nation would determine application of the new title system to its lands. Some First Nations will limit their land-title system to a specific area and may even limit tenure to leasehold title. Others may choose to apply their land-title system to all their lands and enable comprehensive fee-simple ownership. The legislation would facilitate either of these choices as well as an infinite number of choices in between (2010, p. 170).

It is important to recognize that the authors believe they are recommending a system that will not create an immediate and disastrous selloff like Metis Scrip, because they encourage the recognition of collective title. The authors spend considerable time addressing concerns about a potential selloff of land. The problem of previous efforts to give Aboriginal peoples title, the authors say, was not necessarily individual property rights – it was the top-down execution of the act and the lack of collective title. By forcing Aboriginal people to adopt individual property rights, they overturned a functioning property rights system already in place. The authors believe that the existing, collectively managed and functioning property rights system on reserves has individual property rights at its foundation. Positive results would be maximized if administration of individual property rights is given to a self governing First Nation to develop land codes and terms of sale that suit them best within the Torrens system of land management (Flanagan, et al., 2010).

The reasons for a Torrens property system, the authors say, are many. The reasons include reduced transaction costs, First Nations home ownership, lower costs of government, higher First Nations revenues, reduction of land disputes, and improved economic incentives (Flanagan, et al., 2010). The move to individual Torrens property also allows the dismissal of the current reserve property structure, which features Certificates of Possession. Certificates of Possession give an individual member of the band the right to occupy a home and the land it is on for 2 years (Government of Canada, 2009), but does not allow for the sale of land. Furthermore, Flanagan argues against customary land tenure – the traditional systems of land tenure practiced by Aboriginal peoples. He states that they tend to be poorly documented, unsurveyed, and subject to the authority of the band council (Flanagan, et al., 2010). For the Babine, Flanagan would be referring negatively to traditional stewardship practices, such as the power of the Hereditary Chiefs to steward their traditional territory and the land tenure relationship to the Bah'lat.

The resolution presented in *Beyond the Indian Act* (Flanagan, et al., 2010) is not immune to criticism. Though the authors recommend the recognition of collective title rights, they still advocate a move toward western land tenure practices. By advocating for individual property rights, traditional forms of land tenure must be dismissed. For example, the Hereditary Chiefs of the Lake Babine Nation would have their land stewardship power further eroded by removing their influence on individually owned plots of land that are on their traditional territory. Individual ownership of land also decreases the collective power to influence the use of land, making it easier for external interests to develop businesses or resource projects even if the collective disagrees with the development. By weakening the

connection between traditional stewards and the land, First Nations people are being assimilated into Western, individual land tenure systems.

Much of the debate about land tenure and changing property rights on reserves is framed as economic development. Harvard Project on American Indian Economic Development was launched in 1987, and its goal was to “Understand and foster the conditions under which sustained, self-determined social and economic development is achieved among American Indian nations through applied research and services” (The Harvard Project on American Indian Economic Development, 2010). The Harvard Project supported the publication of many articles, many of which are by Stephen Cornell and Joseph Kalt, the founders and co-directors of the project. For example, *The Redefinition of Property Rights in American Indian Reservations: A Comparative Analysis of Native American Economic Development* (Cornell & Kalt, 1987) makes the case that, because of a movement toward American Indian Tribal independence, particularly in terms of property rights, tribes have an unprecedented opportunity to develop economically. Issues presented by Cornell and Kalt (1987), such as changing sovereignty, attracting investment, and the relationship between cultural institutions and economic development, are major themes in the current debate about Aboriginal land tenure in North America. The modern discussion regarding Aboriginal title now appears to be largely motivated by the pursuit of western notions of wealth.

Western notions of wealth and economic development are often at the core of self-government or comprehensive land claim agreements, despite infringing upon traditional Aboriginal land tenure values. In British Columbia, the BC Treaty Commission (BCTC), which exists to encourage and streamline the negotiation of treaties, publishes material that

emphasizes the potential benefits of economic development for both the First Nations and businesses in the province. For example, the fall 2003 report of the BCTC *The Business Case for Treaties* states that resolving the land question is critical to British Columbia's future economic prosperity (BC Treaty Commission, 2003). The document emphasizes the potential of resource extraction, using the Nisga'a treaty as an example. The document states "The Nisga'a treaty will pump as much as \$188 million into the economy assuming the money is invested and spent here. The Nisga'a and their neighbours in Terrace and throughout the region are already feeling the benefits" (BC Treaty Commission, 2003, p. 3). Little effort, it seems, has been dedicated to a discussion about land tenure since the initiation of treaty negotiation in the early 1990's. Land tenure and cultural values have been ignored in the face of economic interests.

Economic development, particularly when it extends to interests beyond a particular First Nation, can be seen as a diversion from the values that underpin First Nations land tenure. To have an academic or community based discussion about the economic development of a Nation is not the same as having a discussion about the land tenure values of First Nations. The land tenure values of the Babine are too complex and rooted in their own cultural history and interaction with their traditional territories to be exclusively defined by a discussion about economic development – a concept that, as we have determined, has co-existed with western conceptions of land tenure since the colonization of the Americas.

Property Policy and Representations of Land Tenure

Debate about modern Aboriginal land tenure and its place in modern Canadian politics largely exists because of an ongoing discussion of recognizing collective Aboriginal

title rights. Two major Canadian Supreme Court land title cases in particular catalyzed the discussion of Aboriginal Title – *Calder v. British Columbia* (Calder et al. v. Attorney-General of B.C., 1973) and *Delgamuukw v. British Columbia* (Delgamuukw v. British Columbia, 1997). Whereas the governments of BC and Canada refused to recognize Aboriginal title prior to these cases, they are now in negotiations with many First Nations for comprehensive land claims. Title recognition allowed for the first modern treaty in British Columbia in 1999, the Nisga’a treaty, in part due to the expected results of the Delgamuukw case. Cases such as *William v. British Columbia* (William v. British Columbia, 2013) look to push the envelope even further by defining specifically where Aboriginal title is. *Calder*, perhaps the most groundbreaking case, indicated that Aboriginal title existed prior to colonization, and was not derived from colonial law (Calder et al. v. Attorney-General of B.C., 1973). The case judgment occurred in 1973, and has since shaped Indigenous title cases across the world, such as *Mabo v. Queensland* in Australia (Foster, Webber, & Raven, 2007). The recognition that Aboriginal peoples did, in fact, have title prior to colonization has fundamentally changed people’s and governments’ understanding of land title.

Delgamuukw (Delgamuukw v. British Columbia, 1997), a case brought by Gitksan and Wet’suwet’en chiefs, went further by recognizing that Aboriginal title, could, in fact, still exist. It stopped short of determining the specific title of the claimants, but did state that Aboriginal title consists of the right to exclusively use and occupy the land (Delgamuukw v. British Columbia, 1997). The case also established a precedent that Oral Histories could be accepted as evidence, paving the way for other cases that used Oral History as evidence, such as *William v. British Columbia* (William v. British Columbia, 2013), among others.

Furthermore, after recognizing that Aboriginal Title could exist, the Provincial and Federal

governments had a renewed interest in signing comprehensive First Nations land title claims to avoid further litigation.

Without the recognition of Aboriginal title, many decisions about land tenure may not have the influence that they now have. Though the debate about the structure of land tenure is ongoing, it exists because Aboriginal title has been recognized. The ideological differences expressed at the academic and governmental/legal level have been largely influenced by these precedent-setting decisions. As decisions have been made by the Canadian judicial system, opinions and policy regarding Aboriginal title in Canada have had to shift accordingly. Prioritizing the settlement of treaties after the Delgamuukw decision is an example of this. The *William* case (*William v. British Columbia*, 2013), which was appealed to the Supreme Court of Canada after being heard in the Supreme Court of British Columbia, as the other cases had been, could prove to push the precedent even closer to defining Aboriginal Title. The case is currently ongoing, and may have a significant impact on future definitions of Aboriginal title in Canada and around the world, though there is also the possibility that recognition of Aboriginal title would take a step backward if it is lost.

Throughout this period of tumultuous legal activity has been an increase in Aboriginal activism in BC, Canada, and the world. Aboriginal Activism has, in part, been the root cause of land title cases. Beginning in the 1960's, organizations dedicated to the political representation of Indian interests, such as the Native Brotherhood and the Union of BC Indian Chiefs, began to grow in size and power (Tennant, 1990). Metis and non-Status organizations developed, and there were even Aboriginal politicians in Victoria and in Ottawa. These efforts brought Aboriginal struggles for rights and title closer to the public

eye, and eventually helped produce the current political state of academic land tenure discussion.

In December 2012, parliament passed Bill C-45, a large and controversial omnibus act that included changes to the Indian Act. The act allowed a greater amount of reserve land to be potentially leasable and easier to approve. Rather than needing a majority of votes from over half of the eligible voters in a Band, only a simple majority of voters is needed to approve leases of land on reserve (Government of Canada, 2012). This change is consistent with the western ideology of the government of Canada, which they hope will make land development on reserve easier. The shift in ownership policy expressed in C-45 is also consistent with the land tenure policy emerging in First Nations in British Columbia that have comprehensive land claims, such as the transition to fee simple property in the Nisga'a Nation. The Act was also a major catalyst of the Idle No More movement in response to certain First Nations groups' perceived negligible consultation with First Nations. Conservative policy makers have been advocating an individual property ownership approach as a part of their visions for Indian Act reform for years, and it is only now beginning to ignite a discussion about the role of property in Aboriginal self-determination, and Aboriginal people's involvement in its development. This movement is in spite of the Indian Act – an act that has been ineffective for the government's long-term goals and oppressive for the First Nations of Canada.

Though the Indian Act was developed to assimilate the First Nations people of Canada into western ways of life, the Indian Act also allowed the government of Canada to isolate and move Indian Reserves. The government of Canada, for example, manipulated the reserves of the Babine in the Barricade Treaty so that the Babine would be less reliant on

traditional forms of subsistence, and business interests could develop their access to the Salmon catch on the west coast. In British Columbia, the potlatch was – the traditional political structure that governed property ownership – was banned. Laws that restricted Indians to reserve land were enforced. Furthermore, the Canadian government continued to uphold that “reserves are held by Her Majesty” (Government of Canada, 2009, p. 17) and “No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band” (Government of Canada, 2009, p. 18). Until 1951, Indians had no way to prove ownership of the land they were living on.

By 1951, immeasurable social damage had been done to Aboriginal people in Canada by the Indian Act. Though a form of ownership and sale between band members was available on reserve with Certificates of Possession, which were introduced in the 1951 revision of the Indian Act (Government of Canada, 2009), Indians living on reserves were still shackled by the forced isolation from their traditional territories and their legislated inability to manage those traditional territories. The long-term impact of the Indian Act on First Nations peoples’ conceptions of land tenure is difficult to quantify. Though many First Nations continue to practice customary property rights, traditional systems of administering the ownership and stewardship of land have changed, and the role of private property and fee simple ownership is undeniably influential. The restrictions that the Indian Act imposes on status Indians in Canada has been recognized by the government and First Nations people alike, and efforts have been made to encourage self-determination through self-government agreements and comprehensive claims.

As it applies to land tenure, governance agreements signed in British Columbia have been created with a consistent structure, sharing land codes that are largely based on the BC Land Act, such as that of the Nisga'a treaty (Nisga'a Lisims Government, 2012). The Nisga'a Treaty was the first of the modern treaties in British Columbia when it was signed in 1999 and implemented soon thereafter. The governance structure and terms of the agreement have served as a model for treaties that followed it, from the portion of traditional territories available for negotiation to the structure of village governments and the elected and appointed legislature and upper chamber. (Nisga'a Lisims Government, Government of Canada, & Government of British Columbia, 1999). Though the Nisga'a constitution reflects traditional leadership structures, including Hereditary Chiefs and elders forming an entire upper chamber similar to the Senate, that body has no legal authority and the decisions they make are not binding (Nisga'a Nation, 1998). Furthermore, the Hereditary Chiefs – the traditional stewards and owners of the land – have no direct legal authority over the administration of Nisga'a lands. Modern treaties in British Columbia appear to reflect an inherent inclination away from traditional land tenure and toward ideologically western land tenure tools and practices. The Nisga'a treaty also shows evidence that the centralized reserve-like land tenure structure is temporary, and that the guided trajectory is away from traditional land tenure practices.

The policy trajectory of the Nisga'a appears directed for ongoing development toward fee simple property, and in 2009, the Nisga'a Lisims government passed an act entitled the *Nisga'a Landholding Transition Act* (2009). Whereas land was held with a Certificate of Possession, the act allows members of the Nisga'a Nation the option to own their home and residential property as fee-simple, meaning they have the option to sell and mortgage their

home (Nisga'a Lisims Government, 2009). It also describes the exact transition process from Certificates of Possession, the limits on lot size, approval process, and connects the policy to existing land policy in the Nation. The shift, it is hoped, will add value to their property, leading to entrepreneurship through equity and eventually economic development.

No agreements that are relevant to land tenure have been signed encouraging First Nations to implement traditional land tenure structures, such as Hereditary Chief and Clan stewardship structures. Though the economic success of the Nisga'a Treaty is unclear, other First Nations groups in BC have been successful with the western approach to land tenure. The Tsawwassen First Nation and Westbank First Nation have seen recent success, but this may be in part due to their advantageous geographical area. The Tsawwassen First Nation occupies a location with plenty of economic demand as a part of the greater metropolitan area of Vancouver, which has a population of nearly 2.5 million. The proximity of the Tsawwassen to relatively wealthy, urban centres makes the transition from centrally controlled Certificate of Possession land tenure to fee simple under collective title very economically attractive. The potential for developing a real estate market in an urban area is much easier than somewhere remote and with a low population, and the Tsawwassen First Nation has taken advantage of their desirable geographic location. A flurry of economic activity is in their near future, and includes long term leases for farm land and a major residential and commercial development (MacNair, 2013). The Tsawwassen First Nation has capitalized on their advantageous economic situation, shedding the restrictions of the land tenure structure of the Indian Act.

Likewise, the Westbank First Nation has found success because of their geographical location next to the city of Kelowna. Though they have not signed a comprehensive claim,

they did sign a self-governance agreement in 2003, and their lands are not governed under the Indian Act (Westbank First Nation, 2003). The agreement allows the First Nation to lease and tax property that they otherwise would not have had the power to do, but the lands are still held by the crown – they do not have collective title to the land. This approach takes advantage of the high land values in the area, but does not First Nation the legal authority to implement traditional land management structures – the First Nation owns the land as an owner would, not a traditional steward. These limits are an expression of both the specific agreement and western structures in general.

Other approaches are still available, and the Haida have pursued governing rights that are not tied to individual property ownership. The Haida agreement, titled the *Haida Reconciliation Protocol* (Haida Nation & The Province of British Columbia, 2009), develops more shared and joint decision-making, resource revenue sharing and economic opportunities for the socio-economic well being of the Haida. It is designed to allow the Haida to develop in ways that the restrictive Indian Act and its land code could not, but does not necessarily carry with it the individual land tenure that the Westbank First Nation agreement does. Other First Nations across the province have followed suit, entering into agreements that attempt to break down the barriers that the Indian Act present, but do not have individual land tenure at its foundation. This is not to say, however, that western perspectives about governance and land tenure are not an ongoing factor in these agreements as well.

The Lake Babine Nation is like other rural First Nations in that they do not have the same high land value opportunities as the Tsawwassen and Westbank First Nations. In addition to urbanization that may be contrary to the values of the Lake Babine Nation, rural

First Nations would have to be willing to develop resource extraction on the traditional territories. In the recent Incremental Treaty Agreement (ITA) the Lake Babine Nation acquired rights to areas around Babine Lake, including a resort and other areas for forestry opportunities, and \$100,000 for capacity development. Unlike a treaty, the ITA provides the Lake Babine Nation with the opportunity to develop economically on a larger land base without a permanent agreement. The agreement, however, is not recognition of collective title (Lake Babine Nation & The Province of British Columbia, 2012). The Lake Babine Nation's acquisition of specific parcels of land as well as money for capacity development is recognition that the leaders would like to develop the economic well being of the Nation. Furthermore, the acquired land exists as fee-simple land, whereby individuals or corporations can purchase it if the Lake Babine Nation chooses to sell it (Lake Babine Nation & The Province of British Columbia, 2012). Both of these notions – land for the purpose of economic development, and the possibility of a transition to fee simple land ownership, show continuity with the land tenure philosophy of the Canadian government that have been described in this chapter. It is not implicit that the Lake Babine Nation do not or will not practice traditional land management now that they have signed an ITA. It is possible that they can include stewardship and collective responsibility in the decision-making process, particularly as they apply to running a resort and any resource development that may occur.

The ITA demonstrates that governance agreements with significant implications for land tenure are a very real issue that demands consideration. Without a discussion of Lake Babine Nation land tenure values, the ITA could pave a path that has western values at its foundation, dividing the Nation. If the Lake Babine Nation were to have an open discussion about their land tenure values, the ITA could prove to be a litmus test for their capacity to

uphold their values in any governance or comprehensive claim agreements. If that is the case, then the Lake Babine Nation may find the ITA to be an excellent opportunity, which could pave the way towards beneficial agreements in the future. The ITA has raised the stakes, and made the discussion about land tenure values more urgent and with more real and immediate implications than even a short time ago.

The Babine are at a crossroads. Comprehensive claims are a double-edged sword, offering potential economic development with the chance of failure or stagnancy, and an unsure role for traditional land tenure structures. The trajectory of the Nisga'a land tenure structure could be indicative of the structure of treaties to come, indicating that traditional land-tenure management bodies may only be applicable if they exist as a non-legally binding body, such as the upper chamber of the Nisga'a Lisims government. If the Babine are comfortable or eager to change the role of their traditional land governance practices and their hereditary leaders, then the Nisga'a provide a model that can be adapted for the Lake Babine Nation. If, however, the Babine believe that the traditional land tenure is more relevant now and in the future than western land tenure, the leaders of the Nation need to re-evaluate the way they approach comprehensive claims and self-governance agreements. For the leaders of the Lake Babine Nation, these decisions are significant. The land tenure practices and values presented at the negotiation table will have a profound affect on the Nation's long-term political engagement, and if they do not assert their values, the Lake Babine Nation could find their comprehensive land claims and self-governance agreements directed toward land tenure practices that are not their own. The Babine must make a decision regarding their land tenure values before they are forcefully implemented in a self-government agreement.

Chapter 3: Methods

To evaluate the state of the land values of the Lake Babine Nation and their leaders' visions of ownership and stewardship, I chose to do a qualitative research study. A single case study methodology was used. Interviewing leaders of the Lake Babine Nation accomplished multiple goals, including an evaluation of how land tenure values have changed since the nineteenth century. As well, interviews revealed how the leaders of the nation envision the structure of land tenure, how they intend to navigate competing ideologies, and how they can work together with each other and the land management tools at their disposal to reach common goals. The participants were all leaders of the Lake Babine Nation band. Though the participants are all from the same nation, they come from many different demographics, including Clan, gender, age, home community, current community of residence, and internal political bodies – the Hereditary Chiefs, Chief and Council, and/or the Treaty Office. The methodological structure of this thesis is a single-case study, which was useful for comparing the change in land tenure values between early depictions of the Lake Babine Nation land tenure values and the current land tenure values of the Lake Babine Nation leadership. The interview questions were designed to facilitate discussion of responsibility for the traditional territories, competing ideologies, and ultimately the visions of ownership and stewardship of land in the Lake Babine Nation.

Theoretical Approach: The Four R's

The theoretical approach I used for this research is based on Indigenous values for community research. Though my research is academic, it is inherently tied to the communities of the Lake Babine Nation, and the research process cannot be divorced from

the outcome. The research question “What are the land tenure values of the leaders of the Lake Babine Nation?” is designed to contribute to reflection on a national level so the nation can engage in a conversation about self-determination that has been historically directed by external bodies. The research process, from the literature review to the interviews and analysis, is done equally for the research process as it is the research outcome - an increased capacity for self-determination. The four R’s – respect, relevance, reciprocity, responsibility - as expressed in Kirkness and Barnhardt’s *First Nations and Higher Education* (1991) provide a framework for my work by emphasizing the relationship between myself and the communities. Each of the four aspects provides a vital role in my research.

Respect, as Kirkness and Barnhardt explain, is about recognizing Aboriginal peoples’ culture, traditions, and core values as academically valid. They state that indigenous knowledge can be highly varied among different peoples, but in each case, they are based in cultural truth (1991). A respectful approach to Indigenous community research demands that the community’s knowledge is not simply understood as an opinion, but as a truth based on their cultural context. By addressing the values of the nation, I am hoping to provide insight to their current cultural, political and economic realities. Without mutual researcher-community respect, the community has no reason to trust my research outcomes. I have expressed my respect by interviewing community leaders, addressing their concerns as presented, and having the community and interviewees review the findings.

Reciprocity had an equal role in shaping the purpose of my work. My research is designed to have implications for the Lake Babine Nation, the Indigenous academic community at large, and other Indigenous groups on the path to self-determination. By giving me the opportunity to work within the community and develop academically, I owe the

Nation a research outcome that is useful to them. Throughout my research, guidance was sought from community members and organizations, such as the Lake Babine Nation and LBNTO to confirm that my work would help the community with their goal of self-governance. They were always supportive of my work.

Relevance obligates the researcher to be mindful that community research has an audience beyond academia. To have relevance, the work must bring with it an “institutional respect for Indigenous Knowledge” that helps to build on Indigenous knowledge that already exists within the community (Kirkness & Barnhardt, 1991). Without the work having community relevance, the individuals within the community have no reason to interact with the research, defeating its purpose. The Lake Babine Nation is actively pursuing self-determination, and major governance and land tenure decisions, such as the Incremental Treaty Agreement, are being made. Governance and land tenure are currently priorities of the Lake Babine Nation, and further exploration of the topic is timely.

As a researcher, it was necessary to recognize the power I have to represent members of the Lake Babine Nation and their knowledge in the academy and elsewhere. I was responsible for my actions while researching, and made sure that the community had an input to make sure it is respectful. To do this, I met regularly with those who were giving me guidance in the community. Furthermore, there is always a concern that a researcher can leave without giving back after the research is complete. With family roots in the community, it was always important that the research relationships were positive and that the research outcomes were useful. Knowledge translation, which takes research from academia and moves it to the communities that can practically apply it, was at the core of this work. Just as my connections with the community helped to speed the relationship building with the

community, the relationship assured accountability with regular, long term communication with participants and political bodies.

In the research process I discovered that respect and responsibility were more meaningful than I could have expected, and it led me to a deeper understanding of my research relationships. Over time, I discovered that the application of the 4 R's to my research would have a profound effect on the way I see myself within a community. I had never viewed myself as meaningfully contributing to an entire community of people with my work, and the reciprocity that comes along with a research relationship is exciting and humbling for a new researcher. Furthermore, I discovered that the perceived neutrality of Western academic thought, particularly as it applies to land tenure, could no longer be held as a virtue in quite the same way as I had understood prior to my graduate work. If the needs and values of the community are held as valid and I am dedicated to an empowering research outcome, then my academic ambitions should reflect that. The four R's, which were mutually practiced between the community and myself, created a far richer learning experience than if I had done the work alone.

At every stage, a community-focused approach guided my work – my thesis was to be supported by theory, but its foundation and purpose was driven by the community's knowledge and needs. I presented my work to key political leadership organizations within the community, including the Band Council and the Treaty Office. After receiving their support, I introduced my work to individual political leaders, some of whom I interviewed. The unique nature of First Nations demands that a community approach to research is necessary for exploration into self-determination, because no single approach will be able to represent every First Nations' needs and values.

As an Indigenous person born and raised in an adjacent, non-Indigenous community, my research relationship to the Lake Babine Nation was complex and unique. The town of Burns Lake has very close ties to the Lake Babine Nation, and many in the nation recognized or have ongoing relationships with my family. I am fortunate that the relationship existed and continues to exist, because it provided a further layer of responsibility. The existing relationships allowed me to comfortably express my research ideas to the community, and I felt as though I integrated myself as a researcher faster than if I had been unknown by the community. My lack of cultural connection to the Lake Babine Nation, and more specifically not being a member of any of the Clans, prevents me from exploring deeper into cultural stories that may be reserved for specific individuals or Clans. Out of cultural respect and a want to work with the First Nation as a whole, I chose not to specifically explore cultural stories that are held by them.

Single-Case Study

The explanatory single-case study research methodology, as described by Yin, was chosen to describe the current state of land ownership and stewardship values in the Lake Babine Nation. Yin states that questions of “How” something has changed over time are particularly suited for the methodology of case study (Yin, 1994). How the values of Lake Babine Nation leaders have changed since the nineteenth century, then, can be organized as a case with early depictions of Babine stewardship methods serving as a comparative foundation. The single case study, as Yin states, is:

A common design for doing case studies, and two types have been described: those using holistic designs and those using embedded units of analysis. Overall, the single-

case design is eminently justifiable under certain conditions – where the case represents a critical test of existing theory, where the case is a rare or unique event, or where the case serves a revelatory purpose (Yin, 1994, p. 44).

The story of land tenure values is also a unique case, and no other First Nation's cultural values will be exactly the same. They have been impacted by specific historical external events and policies that have not impacted other First Nations. Currently, however, changing ideological and political movements are affecting First Nations land management across the province and country, making the modern academic debate about these issues relevant for the Lake Babine Nation. The unit of analysis in this work is the individual, in that the opinions of the interviewees are considered separate from each other. Though significant analysis is done on the political bodies that the participants are associated with, the participants are not representative of those bodies. Participants' perspectives are being compared to the land title values described in the literature beginning in the early nineteenth century.

Long before contact, the Babine adapted the feasting system of governance from First Nations to their west. Since then, it has been a fundamental part of their way of life, and acts as the comparative foundation of this case study. The Babine have undergone dramatic social and economic changes brought about by trade with non-Aboriginal traders and government legislation. During the twentieth century, anthropologists recorded the traditional land tenure and social structure systems both by observing and interviewing the Babine people. Many of the fundamental cultural structures of the Babine that existed prior to the twentieth century, such as the Potlatch and the hereditary/matrilineal name-title system, still exist. The traditional land stewardship values are still vibrant, but are being tested and adapted as a

result of western individual land ownership and government policy. The explanatory single-case study approach allows me to restrict my study to a definitive group, and evaluate how ownership and stewardship values have changed over time by comparing historical literature with qualitative research. Furthermore, I can identify and analyze the specific ideological and political influences that are currently impacting the case of the Babine.

Defining the Case

The most important parameter for the interviewees was that they be a recognized leader of the Lake Babine Nation. The future of land tenure in the Lake Babine Nation is largely made by the Nation's political organizations, and the values of the individual leaders are important in understanding the direction of the Nation. Secondly, the interviewees were directly connected to the 3 major political bodies of the Lake Babine Nation – the Chief and Council, the Hereditary Chiefs, or the Treaty Office. The bodies are not mutually exclusive, and interviewees may associate themselves with more than one of the bodies. Candidates that had political experience in band administration, and those who were candidates for hereditary chief names were also considered.

Multiple forms of sampling were used to identify participants. First, purposeful sampling was used to begin selecting the research participants, because, as Creswell states, “[The participants] can purposefully inform an understanding of the research problem and central phenomenon in the study” (Creswell, 2007, p. 125). Some participants, such as current/longstanding former chiefs, were easy to identify because of the high profile nature of their positions. Other leaders, such as Hereditary Chiefs, were more difficult to identify for someone from outside the cultural/traditional community.

To identify the additional leaders, snowball sampling was used, and fellow leaders and participants recommended other individuals who were suited and interested in the study (Creswell, 2007). The recommendations were based on their position as representatives or spokespersons in traditional political bodies such as the Bah'lats. Many long-time leaders, past and present, were chosen. Some of the interviewees had occupied roles in different organizations or forms of leadership, and the intersecting political lives of the participants added an interesting dimension to the leadership structure of the Babine. The closeness has potentially significant implications for present and future political structures.

The other demographics noted were age, gender, Clan, community of residence, and home community. The ten participants were from the communities of Woyenne, Burns Lake, Smithers, Old Fort, and Pendleton Bay. There were six males and four females, representation from all of the Clans, and the age of the interviewees ranged from 30 to 80.

Clan recognition was quite important to note considering the topic of land tenure. Clans, which traditionally act as a vitally important and independent political and social institution, provided guidance for how land was owned or stewarded. I wanted to recognize the Clan's authority, and the possibility that values may change from Clan to Clan for future research. It is also traditional protocol that Clans, or individuals of Clans, do not speak on the business of another Clan.

Those who identified as Hereditary Chiefs were usually older than those that hold/had held positions in Chief and council or other band administration roles. Those who worked with the treaty office ranged in age. I was open to the possibility that age may play a part in the formation of values. I also made an effort to have an equal male-female balance. The

Babine have a long cultural history of women in politically important positions, and it would have been unrepresentative of leadership if there were not a balance.

Distinguishing between communities is historically relevant because the Lake Babine Nation was not always a political unit under the Indian Act. Prior to 1957 Ft. Babine was an independent band under the Indian Act, and their independence continues to be a political issue. The majority of interviewees were born and raised, or are current residents of, Woyenne. Those that were younger tended to reside in urban centres, but still associated themselves with one of the Lake Babine Nation communities. Those who currently resided in Woyenne but were born in a community on Babine Lake were likely to emphasize where they were born and raised rather than their current residence. The same was true when referencing other community members' residences. Quite often, when a participant was describing the way they understood ownership or stewardship, they emphasized their stated community of origin – that is, they described how they owned/stewarded the area where they traditionally lived, not their current place of residence. Furthermore, there was no emphasis on place of origin as having a distinctly political approach beyond the context of the land that was owned/stewarded in the area. Though my intention was to have clearly defined community association, it became evident that this was not possible. Despite this, my work still provides a range of perspectives that have foundations in the many communities of the Lake Babine Nation.

Contextualizing the Case

A body of comparable literature is necessary to evaluate the values of the leadership of the Lake Babine Nation. Though there is no work specifically on land tenure values

among the Lake Babine Nation, my methodology can be justified with two distinct bodies of literature. First, the control for the study is the past way of life of the Babine as described by anthropologists and early HBC traders. The stewardship practices of the past are still evident in the lives of the Babine, and are an obvious factor in the fundamental values of the Babine, as they have been researched in modern literature and emerge in my interviews. Secondly, the debate about the westernization of property in First Nations has become significant in the past two decades. Beginning with the Harvard Project on American Indian Economic Development (2010), and most recently with work by Tom Flanagan (2010), the debate has contextualized the ideological and political push for the Babine to adopt western property ownership schemes.

Ethics

As qualitative research with human subjects, my thesis needed to be approved by the UNBC Research Ethics Board (REB). Furthermore, my thesis conforms to the Protocol Agreement between the University of Northern British Columbia and the Lake Babine Nation, and I had permission from the Lake Babine Nation Band Office to do my thesis research. Each interviewee had the right to remove him/herself from the work at any point in time, and was given an opportunity to reflect on their contributions to the thesis to confirm that their words have been represented in a fashion that they support. To do this, interviewees were given the option to review their interviews and transcripts. The interviews were recorded with a digital voice recorder, and the files were kept private on my personal computer under password protection. All interviewees chose to use their real names.

The Interviews

The interviews were semi-structured, composed of six questions, and lasted between approximately 30 and 90 minutes. In most cases, I asked the interview questions in order, from one through six, but sometimes the interviewees chose to address the questions in a different order. They were encouraged to answer with as much depth as they felt necessary, and could add further comment if they wanted. Clarifying questions were asked if a relevant topic needed expansion. The interviewees often went beyond the scope of the question asked, introducing ideas that go beyond the scope of my thesis, but are relevant for future consideration when it comes to land administration, governance, and social organization of the Lake Babine Nation.

The questions were designed to develop a discussion about how the Lake Babine Nation should administer the ownership and stewardship of land. The first three questions were intended to elicit to what degree the political groups in the Lake Babine Nation are responsible for the traditional territories. The questions were:

1. Who is responsible for the traditional territories of the Lake Babine Nation?
2. What responsibilities do House Chiefs have in relation to the traditional territories?
3. What responsibilities do elected members of Chief and Council have in relation to the traditional territories?

The second group of questions were designed to create a full vision for the ideal ownership and stewardship of land in the Lake Babine Nation, and also place that vision in the context of other values – more specifically that of the governments of British Columbia and Canada. The questions are:

4. How do you think the Lake Babine Nation should structure and administer the ownership and stewardship of land after a treaty settlement has been reached?
5. What role should the government have in the ownership and stewardship of the traditional territories?
6. In what ways do the Federal and Provincial governments understand the ownership and stewardship of land? Is this different than your understanding?

The interviews took place between August 2011 and December 2012 in a variety of places. The interviewee was always able to choose the place that was most comfortable for them, and that was usually their personal offices in Burns Lake or Prince George, or the Treaty Office in Woyenne. The times of the interviews were always during work hours and at the request of the interviewees. Two of the interviews were not done in person, including a phone interview and a prepared written response to the questions at the request of one participant. The phone interview was arranged because the participant and I were unable to reach a convenient time and location, and the written response was given because the participant felt more comfortable with a prepared statement. Each participant signed a prepared consent form before the interview that outlined the purpose of the work, the role of the interviews in the work, and the rights of the interviewees to review and withdraw statements.

Analysis of the Data

The data was transcribed and reviewed by myself. The semi-structured nature of the interviews meant that responses throughout the entire course of the interviews could be considered as relevant to any specific question. After reviewing the data, responses were

highlighted that addressed one or more of the six questions. The responses were compared and contrasted to identify specifically what the interviewees stated about land tenure responsibilities, their visions for land tenure in the future, and the role of external values, particularly that of the Federal and Provincial governments. Common values and approaches that bridged the individuals and political bodies were explored, defined, and named. The themes were then compared to values described in the anthropological literature on the Babine to evaluate the change in values since the early nineteenth century. After concluding on a set of fundamental Babine land tenure values, they were applied to modern political approaches to land tenure, and the implications were discussed.

Chapter 4: Results

The leadership of the Lake Babine Nation has a deep vested interest in their Nation's future. All of the interviewees have experience representing land tenure values in the Lake Babine Nation, but the existing political structures confine their development of governance and land tenure alternatives. Just as this thesis has been shaped by the academic and political environment of the day, so have the responses of the interviewees. The late Joe Michell, Hereditary Chief of the Caribou Clan and Lead Treaty Negotiator of the Lake Babine Nation, addressed the ambiguous nature of ownership and stewardship, and the role that leaders and members play in defining conceptions of land tenure. He stated

Delgamuukw describes it as stewardship. Yet they have ownership too. On the land, that type of thing. Now how do people view that, hey? How do they view it as stewardship? That's a question we're going to ask ourselves for a long time. Now these are the courts' thoughts on it. Then the average non-Hereditary Chief would

say, 'but remember, we all own it,' ya know. How do we start partaking in that? How do we make ordinary, non-Hereditary Chiefs a part of this? I'm married to a Chief... so how do I get *my* Clan members to be a part of that whole process? Some of them are pretty intellectual. So... I think you need to involve them too, eh. The no name people. They may have some good suggestions.

Michell's comment contextualizes many of the major themes that emerge throughout the results. For example, he alludes to tension that is the result of expectations for Hereditary Chiefs to be leaders, but also inclusive of members. He also hints about issues relating to the relationship between leadership, stewardship, and individual interests. Finally, he recognizes the ongoing importance of traditional political and social structures. These issues will, in part, define the major obstacles that the leaders of the Lake Babine Nation are responsible for. Together, Michell's comments, in addition to those of the other interviewees, indicate that there are 3 major themes in this thesis. First, collective decision-making speaks to the modern and traditional value of including all those that have a stake in land tenure. The second theme, strong traditional values, refers to the ongoing relevance of traditional political structures and roles for the leaders. Finally, dynamic resilience was identified because the leaders of the Lake Babine Nation have a long history of identifying and manipulating land tenure practices in their best interest after applying their own unique values.

The complexity of the results is in the depth of the story of the Lake Babine Nation. The simple approach would have been to develop a Western or Traditional ideological narrative of the ongoing conceptions of land tenure. Rather, the leaders identified paths to develop land tenure policy in the Lake Babine Nation that incorporated ideas outside of the western ideological box that had been enforced through colonization. The results emphasized

the Nation's responsibility toward the traditional territories, a fundamental part of governance and the health of the Nation as a whole. The following is a discussion of the themes. The interviews will be discussed in the order of the interview questions, which were structured to examine the breadth of ideological perspectives among the interviewees, present the interviewees' vision of land administration, and weigh their perspectives alongside other values.

Political Climate

The political climate of Aboriginal land tenure in British Columbia and Canada provided context in which some of the participants expressed their values. For example, the Delgamuukw decision forced the Provincial and Federal governments as well as First Nations to quickly define stewardship and ownership, particularly as it related to the numerous emerging land claims. Shortly thereafter, the land tenure structure of the Nisga'a treaty became the foundation upon which all other treaties would be formed. The Nation's land ownership and autonomy has a history of being challenged, and there was concern amongst community members and interviewees that land tenure would be met with strong, divisive emotions. For example, there has been an oppressive and toxic historical relationship between First Nations and the Federal Government, leaving distrust in its wake. Recently, the Provincial Government has been involved in resource development projects within the traditional territory of the Lake Babine Nation, including mining projects, forestry development, and liquid natural gas and diluted bitumen pipelines. These projects threaten the traditional Babine leadership bodies and their responsibilities to the traditional territory. Furthermore, competing land claims from other First Nations threaten to minimize returns in

negotiation. As a result, land stewardship, generally speaking, was a contentious issue in the Lake Babine Nation. Though frustration was expressed in the interviews, the issue was not fundamental enough to form a major theme.

The political make up of the Lake Babine Nation leadership also creates a unique political climate. Unlike other Canadian and Western political structures, the Lake Babine Nation has the cultural political body of Hereditary Chiefs. As traditional leaders, the Hereditary Chiefs play a very important role in the developing land tenure values of the Lake Babine Nation. Their responsibility is to their stakeholders, such as clan members, which has led to a unique relationship with the Chief and Council, the LBNTTO, the Federal and Provincial governments, and business interests. All but one of the interviewees was either a Hereditary Chief, expected to become a Hereditary Chief, or a holder of a traditional name-title. Relative to the Chief and Council and the LBNTTO, the Hereditary Chiefs are regarded as the guardians of traditional values and land stewardship because their political power comes from their relationship to the land.

Other political bodies include the Chief and Council and the LBNTTO. The Chief and Council of the Lake Babine Nation is the target of regular frustration from Hereditary Chiefs and members alike, some of which is addressed in the interviews, including the inability to represent traditional values because of their governance structure being divorced from the traditional territories. The Chief and Council governs the Nation in a non-traditional sense, and keeps a close relationship with the Department of Aboriginal Affairs and Northern Development, with whom they are largely dependent on for funding.

The LBNTTO, which does research and negotiations for ongoing land claims, represents the Lake Babine Nation to the Provincial and Federal governments with their

future governance expectations. Of the political bodies in the Lake Babine Nation, the LBNTO will have the most direct influence on the post-Indian Act land tenure structure. That role would change if, for example, a comprehensive land claim agreement were signed. Throughout the interviews, the LBNTO was rarely mentioned, and much of the focus was on the roles and relationship between the Chief and Council and the Hereditary Chiefs.

The Interview Questions

The participants' responses are organized according to the sequence in which the questions were asked. The discussion that follows is intended to progress from conceptions of land tenure responsibility to an overall vision of Lake Babine Nation land tenure values.

Who is Responsible for the Traditional Territories of the Lake Babine Nation?

Considering the negative social impact of colonization, particularly on the systematic attempt to destroy the pre-existing traditional governance structures, it was expected that many of these Hereditary Chiefs would have negative perspectives toward western land tenure and positive views of traditional land tenure. Some did, and all the interviewees suggested that the Hereditary Chiefs should have a fundamental role in the administration of land. Betty Patrick, former Chief councilor, explains the imposition of Western forms of ownership in the Lake Babine Nation:

The responsibility for the traditional territories are everybody's, but the traditional territories, the lands traditionally went with the names and Clan spokesman. Clan leaders were responsible for being the stewards of the land. They took care of the land to ensure that it wasn't destroyed, whatever was within the land... The responsibility, I think belongs to everybody, but there is extra responsibilities for Clan leaders, and

quite a few of the names come with territories, and now they're called traplines. They were Clan territories, and that changed with government and others when they started to register traplines, and because it's based on our traditional governments, which is the Bah'lats, Clans were starting, well, governments started registering which are now known as traplines, which was traditional Clan territories before, they took away the matriarchs from holding trapline territories so it really lost a lot of traditional ways of handing down the lands. That started the process of men handing down lands to their sons, and because of our Clans and our lineage, we're a matriarchal system where you follow the mother's side, and with that transition, started to lose some of the lands, people still don't know certain areas belong to a certain Clan, but it's being held by a different Clan member, because of the father-son handing down of lands.

Though the hereditary chiefs were supposed to have a strong relationship with the land, it would be understandable if the many years of colonization had lessened their belief in traditional political and land tenure structures. This was not true. Many of the interviewees kept their traditional ideology or respect for the role of the Hereditary Chiefs after they had left the reserve or traditional territory, viewing western concepts of ownership as less than capable of providing long-term social stability and meaning to the Nation. Betty Patrick's statement supports Hudson's suggestion that traditional cultural practices prevailed due to the marginalizing impacts of western labour.

Those who did not answer question one by referring only to the Hereditary Chiefs said that everybody is responsible for the traditional territories. The concept of collective responsibility for the traditional territories added a layer of depth to what could have been a simple dichotomous narrative of land tenure – falling into either a Western or Traditional

ideology. Shared responsibility among all members of the community can accommodate traditional and western perspectives, or even a blended vision of responsibility. It is important to recognize that a response such as Fabian Michell's "The [responsibility of the] traditional territories should be the Hereditary Chiefs'" isn't fundamentally different from Betty Patrick's statement "The responsibility for the traditional territories are everybody's." The answer of "everyone" just emphasizes the Hereditary Chiefs' role in engaging the members. Even the interviewees who were not adverse to including Western ownership practices recognize the inherent relationship of responsibility that the Hereditary Chiefs have with the land, and that there is no equivalent in western forms of ownership. Donna Macintyre, a Lake Babine Nation employee who lives in Smithers and does not have a Hereditary Chief name, expressed that she and other non-Hereditary Chiefs should also be considered in decisions regarding land:

"I think that everybody feels that if this is happening in my back yard, I want to know about it, and I want to be involved in it, right?"

Joe Michell, a Hereditary Chief of the caribou Clan and lead treaty negotiator, emphasized the importance of leaders engaging all Lake Babine Nation members in a relationship of responsibility. He stated:

All of us. All of us are [responsible]. But there are certain leaders that have to recognize... treaty has to recognize – we are facilitating. That's all we are. Maybe it's the elected people and the Hereditary people, because they've proven their identity in court. They may not have the know-how, but certainly there are a lot of good people amongst our... that are not Hereditary or not council members. There are a lot of

good people in our Nation that have that responsibility. You know, I feel that we need to open up our doors to everybody.

The role of the LBNT0, of which Joe Michell was the lead negotiator, is to recognize that they need to facilitate the political interests in the Lake Babine Nation, so it would follow that the LBNT0 would have a strong emphasis on collective responsibility. Collective responsibility, however, was not expressed only by those that were employed by the LBNT0 – it was universally revered as a positive amongst the leaders interviewed, sharing the fundamental value with the Babine of the nineteenth and twentieth century. Additionally, many interviewees expressed frustration with the current lack of shared responsibility. Priscilla Crouse, the youngest interviewee, expressed her frustration with the notion that the position of Hereditary Chief was the sole stakeholder in the land, “These individuals do not acknowledge the current Chief and council and the treaty team as stakeholders to land issues.”

It became evident that the traditional power of Hereditary Chiefs can be overstated and misunderstood by many. The current Chief, Wilf Adam, reinforced the notion that Hereditary Chiefs do not, nor did they traditionally, have absolute power over others within the land that they stewarded. He says:

That’s where we need more clarification is because the lands and territories are owned by the Clans, not one particular Clan member. There may be one Clan member who has a name and the land tied to it, but they’re just the caretakers of the land. It’s not theirs individually. It belongs to the Clan as a whole. So that’s what I meant by not one person can own land. It’s communally owned. All members within that Clan have a say in what goes on in that territory.

Collective responsibility was presented as a vision where every individual not only had the ability to contribute to land management, but also had an ongoing interest in doing so. Though most of the interviewees explicitly envisioned shared responsibility, their visions of how it might be executed were not the same.

What responsibilities do Hereditary House Chiefs have in relation to the traditional territories? The expressed responsibilities of the Hereditary House Chiefs varied from interviewee to interviewee, depending on the imagined governance structure, but were not mutually exclusive. The interviewees described the roles of the Hereditary Chiefs in their relationship with the Chief and Council and their role in traditional governance.

The relationship between the Chief and Council and the Hereditary Chiefs was a major topic of discussion for the interviewees; however, it was one where the onus was expressed as being primarily on the Chief and Council. Whereas the traditional responsibility of Hereditary Chiefs was to regularly oversee the land they and their people live on, they had little opportunity to directly oversee that traditional territory due to relocation as a result of colonization. This changed the way that the Hereditary Chiefs would ideally exercise their stewardship and influence. The Chief and Council, however, have been given governing responsibility by the Federal Government to consult in the purchase and sale of lands and the development of resource extraction projects on those same traditional territories, despite being in the same central geographical location as the Hereditary Chiefs and not necessarily having any more of a direct relationship with the land. The Chief and Council, then, have a role in supporting and informing the Hereditary Chiefs of any developments on the territory. For this reason, much of the discussion about the relationship between the Hereditary Chiefs

and the Chief and Council will be discussed in the following section regarding the responsibilities of the Chief and Council. Other approaches emphasized a less centralized government, which could address the heavy expectations that exist between the Chief and Council and the Hereditary Chiefs.

Alex Michell introduced the idea of a community centred approach, led in part by both Hereditary Chiefs and existing Chief and Council leadership. He states:

If the treaty lands settle, there again, Lake Babine Nation land, you said, and we say “we want village foundation” village foundation have law making authority, and then, then, internal Chief support to work together as a team. I think that’s what it should look like.

Alex Michell’s response suggests that the entire community would have a greater responsibility to the traditional territory, and that the leadership would only act as guides. Furthermore, Alex Michell’s village foundation describes a form of ownership or stewardship that fosters the relationship of all members directly with the traditional territory, in part by being on the traditional territory of the Lake Babine Nation. Like Alex Michell, other interviewees, particularly elders that had been born and raised on Babine Lake, emphasized a migration back to Babine Lake from Woyenne and other urban areas that many Lake Babine Nation members have settled in. James Williams, for example, explains that his vision includes building a community on the land surrounding Babine Lake. He states:

This... any reserve... if I want to make a community [on] the piece of land, I could – we could do it. It’s an Indian reserve, band members have the right to live on it, a right to build a house. And that’s what we want to do with that place.

Those that endorse a migration back to the traditional territory of Babine Lake hope to re-establish the roots of hereditary leadership to the land, and from there, engage the community at large in self-governance on their traditional territory.

What responsibilities do elected members of Chief and Council have in relation to the traditional territories? The interviewees, in general, did not believe that the Chief and Council had any direct responsibility to the traditional territories. The Chief and Council, rather, had a political mandate to care for external relations and the financial necessities of government. It was only with the approval of the Hereditary Chiefs and the membership at large that the Chief and Council should make decisions about land tenure. Emma Palmantier, a former Chief Councillor, states:

They can listen and they can advocate for the Hereditary Chiefs. [They can] interpret for them – some of the Hereditary Chiefs need to read and understand what the proposed agreement is so they really have to fine tune what is on the agreement and read between the lines with the Hereditary Chiefs understand what is going to be happening, because the elected leaders to have a political mandate, but umm, you know they don't have the umm, the hereditary name... and the mandate to deal with lands... and issues related to the land.

The interviewees, including current and former Chief Councillors, suggest inter-governmental and corporate interests in the the Lake Babine Nation and its resources have, in part, made the liaison role of the Chief and council mandatory. Though frustration was expressed with Chief and Council, most of the interviewees recognized and respected it as a necessary governmental body. Betty Patrick states:

Through government interference and the way legislations were written, the government only listens to the elected Chief and Council. They consider them to be the governing body, so everything gets run through the Chief and Council.

As Palmantier expressed, the Chief and Council act as interpreters for many of the Hereditary Chiefs regarding issues affecting the land they steward. Without the Chief and Council providing regular updates on land issues, accessibility and language barriers may hold the Hereditary Chiefs back from ever engaging with the issues that directly affect them.

Other interviewees recognized this process, but suggested that the responsibility placed on the Chief and Council is unreasonable. If the responsibility to communicate all land issues to all of those who have a stake in the traditional territories lies solely with the Chief and Council, then it is understandable how expectations can outgrow their capacity, and that Lake Babine Nation members could become frustrated with the lack of engagement between the Hereditary Chiefs and Chief and Council. Donna Macintyre states:

Lake Babine Nation doesn't have a proper referral process in place, so it comes across someone's desk and it may not get to the appropriate person, so... they deal with everything although they don't have the resources to deal with it properly. Their responsibility [is] that they are to talk to the traditional landholders and be able to pass forward to them what's happening... I would think it would be too much [responsibility], because if you come across something that you don't understand you need the proper department... How would they possibly understand?

The lack of political infrastructure may be the primary reason for this tension. If the Lake Babine Nation were able to allocate the necessary resources to develop the relationship between the stakeholders of the traditional territories and the political leadership, these

tensions may be less pronounced. With the current structure of government, it would be difficult to allocate the necessary resources.

Leaders that supported a mixed traditional and western style of land tenure supported traditional land stewardship practices, but also believed that the Chief and Council governance structures could accommodate some of their traditional land tenure values. The confidence that some interviewees have in the resilience of their values, particularly when applied to Western structures, was remarkably high. The belief in the strength of land stewardship and collective responsibility among the leaders interviewed was universal, and no one questioned their ongoing relevance, supporting the themes of strong traditional values and dynamic change.

It can be easy to fall into a narrative that the Hereditary Chiefs are the only political body that hopes to engage the Lake Babine Nation as a whole with traditional stewardship practices. This is not true. Participants who were members of the Chief and Council, or had been in the past, feel a responsibility, just as the Hereditary Chiefs do, to engage the members of the Lake Babine Nation in land stewardship practices and traditional land tenure values. Recognizing that the political body with the most direct connection with the land is the Hereditary Chiefs, Wilf Adam suggests a memorandum of understanding between the Chief and Council and Hereditary Chiefs. He states that,

I think what we really need to see is a Memorandum of Understanding between the Lake Babine Band Council and the Hereditary Chiefs, and also a working mechanism amongst the Hereditary Chiefs.

Political engagement, then, does not just occur with a single body – Adam recognized that it is every member’s responsibility to engage with their governance. Priscilla Crouse recommends something similar, stating:

The Lake Babine Nation Chief and Council, LBN Treaty Team, and the Hereditary Chiefs need to develop a framework that will ensure that there is meaningful engagement by all parties when there are any discussions regarding the land. Within that framework there needs to be a process for the development of a communication policy and community engagement protocols/processes. This will alleviate a lot of the mistrust that is currently happening between all the parties.

The general frustration with the relationship between the Chief and Council and the traditional territories, even from those who worked for the band, is too significant to ignore. It is clear that the vision of leaders of the Lake Babine Nation for the Chief and Council is one of reluctant necessity, and Emma Palmantier’s suggestion that the Chief and Council act only in a liaison role regarding the traditional territories is a description that other interviewees share, such as Betty Patrick’s description of how the government has legislated the Chief and Council into necessity. The relationship of necessity clearly stems from the Indian Act, begging questions about the place of the Chief and Council in a post-Indian Act environment.

Other participants indicated frustration with the ongoing relationships that political organizations in the Lake Babine Nation had with the Chief and Council, but in less specific ways. The tension about the role of the Chief and Council can be connected to the restrictive and oppressive Indian Act system. The lack of autonomy that is a product of the Indian Act has meant that some frustration may be wrongly expressed internally, rather than looking at

the greater governance structure. This is not to say that the individuals who play key roles in the current political structure will not play a role in any post-Indian Act Lake Babine Nation government – it just means that the institution of the Chief and Council will not be retained or will be changed dramatically to suit the needs of the Nation. Looking farther into the future, Roger Patrick states that the Chief and Council “Won’t be in the forefront anymore, but in the background, for legal advice or business advice.”

How do you think the Lake Babine Nation should structure and administer the ownership and stewardship of land after a treaty settlement has been reached? The structuring and administration of ownership and stewardship of land provided the deepest and lengthiest responses of any of the questions. Visions that had been hinted at in earlier questions, including the role of traditional knowledge, the ongoing protection of the traditional territories, community structure, inclusion of non-Lake Babine Nation members, the role of private ownership, and the major theme of shared responsibility were all articulated. All of the interviewees’ visions of the administration of ownership and stewardship of land included an aspect of traditional governance – indicating that governance and land management do not need to be developed from the ground up. Furthermore, as Joe Michell explains, the Lake Babine Nation has access to western and traditional forms of land management, and that they can learn from both. He states:

I think we’re trying to do that now, you know, a document about how our people used to care for the land. We have legends that are related to management issues, we have legends in terms of the protocol of the animals, ownership of other peoples’ property. All of this is there; it just has not been documented. It’s all oral history... And I think,

I think how we are going to manage the land is going to be a lot, probably a lot more than what the government of today is going to do. We can learn from them, but we can also learn from our forefathers. There is a lot of good honesty that is potentially there for the potlatch, it's a very important culture. We've got to keep our language, and our culture is really dependent on how we manage the land too.

The knowledge that Michell is referring to is not just the structure of the Clans, the houses, and the power of name/titles. The social structure and land administration of the traditional territories was not stagnant, and the checks and balances of society were founded on the responsibility to the land and themselves. Many of the interviewees believe that the tools and values that exist with the traditional stewardship of land are not so rigid that they cannot be applied to the private ownership of land, in concert with traditional structures. For example, Fabian Michell states "The Hereditary Chief [responsible for the territory] would have to be involved [in the sale of land]. We'd lease that land out to the person." Fabian Michell, who strongly stated that the Hereditary Chiefs are responsible for the traditional territories, believes that the traditional leaders can borrow some western tools of land ownership.

Some of the interviewees, such as Roger Patrick, were leery about the prospect of an outright sale of land to non-Lake Babine Nation members. He emphasizes that sales of land, rather than a less permanent transaction such as leasing, would not allow for the application of traditional stewardship values. He states:

My first option would be Lake Babine Nation members... that's what our traditional culture plays a role in. If I can't take it on by myself or my nephew, then I would go to another extended family member, and then if not, I would go back to my father

Clan, see if there's anyone there who could keep it going instead of just giving it up totally.

Patrick is applying the structure of traditional hereditary inheritance. His vision for the limited role of private property ownership would, through traditional means, keep those with a stake in the traditional territories involved in the ownership and stewardship process. His concern is that people with little to no stake in the long-term sustainability of the land should not have the ability to own or use it as they wish, because they will not approach it with the values shared by the Lake Babine Nation. This concern is partially rooted in the history of distrust between Aboriginal people and the Federal and Provincial governments. James Williams expressed this distrust, describing an event where the government was able to sell land without the knowledge of the traditional holder of the land. He said, "I don't agree. They should have a family member around the table and [say]... this is what I'm going to do... I'm going to sell this land back to the government. That's just honesty. And that's what they should do."

Alex Michell elaborated on his vision of a village foundation and the importance of stakeholders of the land. Like James Williams, he remembers a time when many members of the Lake Babine Nation lived in communities on Babine Lake. Though some of the areas became reserves, many of the interviewees that grew up on the lake specifically mentioned that many things were done traditionally, and engagement with the traditional territories was done responsibly. Furthermore, the communities made community decisions, rather than being run from a central government by a select few individuals. He recalls:

People call it the village foundation – people live in the village. For example, Old Fort. People live in Old Fort, and they're responsible for traditional land. They look

after, say, if you're going fishing and hunting; you're going to ask the... village foundation, is this ok? You go fishing or you go hunting in that area. So that's how... that's how it works for... in the past, this village foundation, they're the people... who make decisions about their traditional land. That's how it is.

Alex Michell also hints that the community has a core of leadership. Though he didn't explicitly state it, his mention of the traditional land suggests that the leadership has a significant component of hereditary leadership, likely those with important name-titles, respecting those that have the most stakes and intergenerational understanding of the land they steward. The leaders, however, are available to interact with others that have less responsibility for stewarding the land, but still have a stake. In all of the visions, including the village foundation, the leaders do not get more political power than they would have traditionally, which restricts their political reach to the traditional territory they steward.

Those who discussed the sale of property, if they did not outright disagree with it, suggested, like Patrick, that Lake Babine Nation members should be given preference. The Members would presumably have a long-term stake in the land because of the traditional values that they hold. Some interviewees suggested that non-Lake Babine Nation members should be in the long-term future of self-determination. Joe Michell addressed the issue directly, recognizing that a long-term self-determination vision must include non-Lake Babine Nation members. He reflected on how the Babine would traditionally address the issue, stressing that they were not closed off from other cultures and Nations. He states:

People are going to realize that maybe we should have [evaluated ownership and stewardship values] some time ago. We shouldn't have fear for each. We shouldn't have fear that someone's going to say "Oh, he's going to steal our land... how bad he

is... this is my traditional territory.” And that person doesn’t have his own traditional territory!... But you know, when you go back, some of the Elders tell me, in a lot of our land we had Wet’suwet’en people come in, we had white people come in and use the land. And they gave a percentage of whatever they made to the Clan of that land who had responsibility. So it wasn’t just “it’s my territory, I don’t want anybody here.” Who’s better to use the land and keep it alive is the opinion of a lot of the elders of that time. To keep it going. There’s a lot of ideas that were made ya know, we’d like ya to do that here, we’ll go over and we’ll use your spot where you set nets or whatever. And when it came down to it, take a look at the Barricade. Our people had to work together.

Joe Michell’s quote suggests that he believes that not only can the Lake Babine Nation not afford a stagnant relationship with other Nations and non-Lake Babine Nation members, but that it is better if they pursue those relationships. It is clear that the interviewees consider their land tenure values of the utmost cultural, political and economic importance, but Michell’s statement suggests external influences should not be feared if they use the traditional and modern land and social management tools that they have inherited. The dynamic resilience that Michell is suggesting is reminiscent of descriptions of the anthropological literature of the early 20th century. The discussion, then, should be about how to engage those who want to become stakeholders in the Lake Babine Nation community to practice the responsible land management that is expected by the leaders and members of the Lake Babine Nation.

There were visions of optimism regarding the Lake Babine Nation’s capacity to integrate their values into alternative land tenure practices. For example, Roger Patrick

discussed business opportunities that could arise in a post-Indian Act agreement. Importantly, Patrick sees traditional leaders having an ongoing role and being supported by business, even if the land tenure structure of that business is built on western land tenure structures. He states the importance of including traditional community structures and traditional territory in business: “That’s a better place to get it, right within your own traditional territory. So just comfort enough for Hereditary Chiefs and extended family. I think that’s where it’ll start from.”

Despite the impacts of colonization, including the centralization of political administration, all of the participants expressed visions to empower all members of the Lake Babine Nation, whether they are members or a part of the leadership. The theme of collective responsibility came to the forefront during this question, and the interviewees stressed that the current political structure does not adequately implement the collective responsibility that traditional land tenure values represent. Betty Patrick summarizes the feeling of the interviews, stating “There needs to be something worked out where everybody has a part to play in ensuring that our traditional territories... remain intact and is protected as much as possible.”

What role should the government have in the ownership and stewardship of the traditional territories? No interviewees stated that the government, Federal or Provincial, should have a larger role in the ownership and stewardship of the traditional territories of the Lake Babine Nation than themselves. Betty Patrick elaborates on the toxic historical relationship between the government and First Nations, and the lack of respect for traditional practices. She states the importance of independence very clearly, saying:

The people of Lake Babine should be the ones that set down the standards and make the rules of how things should happen within the lands, and a lot of [development] in the absence of those that are traditional territory holders, like the Forestry Act, the Mining Act, the Environmental Protection Act... they don't protect the environment like they're supposed to. A lot of the methods that the government has to supposedly look after the land haven't looked after the land; it always looks after the best interest of what will come out of the relationship, whether it is between industry or business. In a lot of cases it's been destructive.

Others suggested that the government has a duty to respect and support the Lake Babine Nation and its members as a partner, which they felt they were not receiving. Donna Macintyre states:

I would think that if the government could sort of stand as a support and not as a dictator. If they could be standing by to give support, rather than tell us 'this is the way you have to do it.'

The independence expressed by the interviewees is likely because they felt as though the government did not and could not understand the ownership and stewardship values of the Lake Babine Nation. In the context of the current governance structure, Priscilla Crouse stated that the government has a duty to engage not only the Chief and Council, but also the Hereditary Chiefs. This, in turn, could help to make the Chief and Council more productive on issues not directly related to the administration of land, as the interviewees suggest.

In what ways do the federal and provincial governments understand the ownership and stewardship of land? Is this different than your understanding? In the

final question, the interviewees elaborated on three major frustrations that they had previously expressed. Roger Patrick stated that he felt as though the government didn't have the slightest understanding of his/Lake Babine Nation's conception of the ownership and stewardship of land. Patrick's perspective was not unique amongst the interviewees, but some elaborated on how they felt the lack of understanding had developed. For example, Emma Palmantier, among others, believes that the government understands the Babine social and land administration structurally, but not with any cultural depth. She states:

I believe both governments understand the hereditary system because I know that when I was the Chief they knew that I had to go back to the Hereditary Chiefs, have to have them included in any of the agreements, and for them to understand that, you know, as Chief and Council we only have the political mandate, but we don't have the mandate to negotiate on the ownership and stewardship of land, because it's really the Hereditary Chiefs. In regards to the federal government, they were the ones that really changed our lifestyle, and you know, I really couldn't say much about them, because we uhh, Indian Affairs only deals with programs and services, and provide us different parts of the plan. Back then, when we were viewing documents, they freely cut off a lot of our traditional territory and we've lost some lands to other First Nations, so I think they really need to have a better knowledge of the hereditary systems for those First Nations that lost the land and how they were treated, being forced to move and forced to amalgamate, that's a big case against the federal government, especially against our band.

Both Patrick and Palmantier emphasize the knowledge gap that exists when government representatives do not have experience stewarding traditional territories in a traditional way. They believe, as do other interviewees, that it was the push and shove of politics that forced them to identify the Hereditary Chiefs as a significant body in government. Patrick and Palmantier believe that the values necessary for stewarding the land come with a cultural relationship to the land, and cannot be learned in a western setting.

Alternatively, some, including Joe Michell, believe that the perspectives of the government should not be dismissed at their face value. Although the historical relationship between the government, and in particular the Federal Government, has been oppressive, many of the leaders of the Lake Babine Nation, past and present, have developed and excelled within the government structures. He states, “There are some good people that learned from that system. And I think those people, if they’re willing to adapt to new ways of doing business will be great. There will be people who are going to resist doing a new way of business.” Michell has recognized that many of the leaders of the Lake Babine Nation, including himself, bring a wealth of knowledge and experience to the table from other government employment. Joe Michell’s statement approaches future governance pragmatically, suggesting that individuals should not be defined by their past experiences with Western organizations. It would be unwise, then, to not consider their visions of the Lake Babine Nation’s land ownership and stewardship structures.

All of the participants indicated that the members and leadership of the Lake Babine Nation should be the ones to define their Nation’s values, however, most interviewees also appear willing to adapt western governance structures for their own needs to represent themselves externally. It was abundantly clear to the interviewees that political relations with

the Province and Federal Government would be ongoing, and that Western power structures would be the best able to interact with them, particularly financially. Internally, as it relates to the traditional territories, the interviewees feel that the primary responsibility of land tenure in the Lake Babine Nation should be that of the Hereditary Chiefs.

Conclusion

Early in my research, I was warned about potential conflict regarding land questions, and given the impression that conflict may even be a defining feature of this work. This fear was overstated, and it is important to recognize that this characteristic does not define the leadership of the Lake Babine Nation. All the leaders I interviewed recognized each other's political body's right to exist and their role in the ongoing governance of the Lake Babine Nation in its current structure, supporting the theme of collective decision-making. Most of the leaders that I had interviewed had either been or were currently holding both administrative and traditional leadership positions, and brought many different perspectives, but still had a remarkably unified vision.

After reflecting on conceptions of land tenure in the Lake Babine Nation, the interviewees expressed clear themes. As leaders, they lamented the lack of engagement with the traditional territories, and viewed traditional land stewardship values as the path to collective decision-making, and ultimately social and cultural revitalization. Remarkably, the traditional values of stewardship of the traditional territories, political independence, and collective decision-making continue to keep a strong foundation for the Lake Babine Nation's land tenure values, but the interviewees also were very willing to engage with change that was dynamic and resilient. Though frustration with existing political structures

existed, as they do in any Nation, the universality of their land tenure values is their strength. Collective responsibility as a theme transcended any ideological divides that otherwise existed. Some interviewees were open to mixed traditional and western land tenure practices, but they were sure to emphasize the ongoing importance of traditional land stewardship values and the role of traditional political bodies, and that the Hereditary Chiefs, the traditional stewards of the land, hold the most responsibility in terms of knowledge, management, and the engagement of the members at large with traditional land tenure practices.

Despite the near unanimous support for traditional forms of land stewardship, the mood of the interviews suggested that western land tenure practices in the Lake Babine Nation were inevitable, and that they would not be able to develop if they did not at least partially adopt them. As we have seen in the literature, however, the Babine have a history of taking command of dynamic land tenure change, and this time is no different. So long as traditional land tenure values still make up the foundation of land tenure in the future, and the Lake Babine Nation as a whole are engaged, the leadership of the Lake Babine Nation believe that the upcoming challenges to their land tenure can be addressed.

Chapter 5: Discussion and Conclusions

The evolution in land tenure values among the leaders of the Babine between the nineteenth century and the present is notable for its remarkable consistency. The Babine and their values have endured tremendous social, political and economic change in this time, yet their dedication to land stewardship and the leadership of the Hereditary Chiefs remains strong. From the dismantling of the fishing weirs on the Babine River to the registration of traplines, the early 20th century was tumultuous for the social structure of the Babine. The government of Canada then forced them onto reserves, implementing a highly centralized system of land tenure that did not include input from the Babine, and did not allow for the purchase, sale, or stewardship of their traditional territories. Eventually the government recognized the stifling impact the reserve system was having on the economies of reserves in Canada, and has made an effort to increase the leasable land on reserves, an economic shift toward western land tenure values. Despite all this, the Babine continue to believe that their traditional territories should be managed with traditional land stewardship values, and that the leadership of the Hereditary Chiefs is integral to their management.

In addition to the leaders' commitment to traditional values, they are also open to alternative land tenure structures, including western perspectives. The condition, however, is that these alternative structures must be filtered through the traditional stewardship values that all the leaders hold. For example, if there was a decision regarding the sale of a portion of the traditional territories, every interviewee believed that the decision must go through the Hereditary Chief and the community that stewards the territory before it could be approved. Sales of land that could lead to developments that permanently alter the land would be

dismissed, but less permanent transactions of land would likely be considered, particularly if the purchaser shared similar values and community accountability. The land tenure values that have been expressed in early accounts of the Babine are very similar, and interviewees expressed that the land of the Babine was available for use by other groups, so long as the Babine were in control of their land and resources.

The concern, then, is both what the land tenure values of the Babine are and how the Babine can represent their unique values in any forthcoming land claim or self-governance agreements. It is the leaders that have the capacity to represent their Nations' values, and it is vitally important for them to openly discuss these values with members of the Lake Babine Nation and each other. They must develop tools to implement their shared values and demand accountability for their own and others' ownership of the traditional territories. The opportunity for self-governance exists, but without clearly defined land tenure policy, individual ownership of territory can quickly occupy the political vacuum that currently exists. If the Babine do not promptly define their land tenure values, external land tenure values, such as those implicit in other self-governance and comprehensive claim agreements in BC, may come to define their land tenure policies of the future.

The perception of potential conflict on the issue is particularly concerning for the Lake Babine Nation, and is holding the Nation back from discussing their land ownership and stewardship values. Tension also exists about how the Hereditary Chiefs, the traditional landholders and stewards, should be served by the Chief and Council and LBNTO. The undefined individual responsibilities of the Hereditary Chiefs are an ongoing debate, leading to many members being frustrated by the lack of legal responsibility and influence the Hereditary Chiefs have on the management of the traditional territories.

External factors also exist that have impacted the Lake Babine Nation's seemingly deep-rooted state of land tenure conflict with the provincial and federal governments. The nature of negotiating for land claims in a province that has numerous First Nations has meant that there have been overlapping claims that threaten to reduce or take away land that the Lake Babine Nation believes are their own. Overlapping claims has caused inter-First Nation conflict and has negatively impacted the Hereditary Chiefs of Lake Babine Nation and their relationship with other political groups. Joe Michell mentioned that having different First Nations in competition with each other over the same territory is beneficial to the government's negotiating leverage. Regardless of whether or not that was the intention of the provincial and federal governments, it does appear as though it has contributed to perceptions of land conflict in the Lake Babine Nation.

For more than a century, both the Federal and Provincial governments have given Lake Babine Nation members a reason to believe that they threaten their traditional territory and the values that they stand for. The Federal government, as Betty Patrick mentioned, created the reserve system and the Indian Act, and the impact it has had on the Babine cannot be ignored. More recently, Bill C-45 changed the allowable leasable land on reserves and changed the environmental oversight for rivers and lakes, all of which was perceived as a threat to First Nations people and their traditional territory. The bill was also, in part, a catalyst for the Idle No More movement in response to the government's lack of consultation with First Nations people during the development of the bill. Additionally, the provincial government has had its hand in resource development projects, the most well known being the Northern Gateway pipeline project. Though the Provincial government has not officially supported the project, it has not stopped its progression as many First Nations in the province

have called for. The Lake Babine Nation has even threatened a lawsuit to stop the project (Hunter, 2013).

The results of this thesis indicate that land tenure values need to be discussed. The land ownership values of the Babine are not strikingly different from leader to leader, and because of that, they have an opportunity to develop cohesive land tenure policies. The ideological range of land stewardship values is no greater than any other nations', and the Lake Babine Nation is very capable of creating land tenure principles that reflect their values. The perception of tension has masked the Lake Babine Nation's potential to engage with discussion about land tenure, and it disadvantages them presently and in the future. Elected leadership in the Lake Babine Nation may believe that the issue is so volatile that introducing a discussion on land tenure would encourage further conflict in the Nation and threaten their positions as elected officials.

The tension and conflict experienced in the Lake Babine Nation, however, is a thin narrative that must be deconstructed. There are, in fact, two types of conflict that exist in the Lake Babine Nation. The first type is very visible, and is composed of land battles with the Federal and Provincial Governments and business interests, and internal disagreements. Though it exists, it is normal in any nation, and does not indicate any deep-rooted dysfunction. The second form of conflict is more of a tension created by colonization, wherein the core land tenure values of the Lake Babine Nation have been challenged by western values. The strength of the land tenure values of the Lake Babine Nation are evident, and by categorizing the two types of together, it provides a simple narrative that damages and prevents the Nation from investigating further into its own values. The universality of land tenure values presented in this thesis show that land is not an issue that does not inherently

create conflict, and that the Lake Babine Nation can and should be open to exploring this topic.

Another challenge of land tenure in the Lake Babine Nation is that many of the interviewees believe that private property seemed inevitable, but were very hesitant. Unlike their descriptions of traditional practices of land tenure and stewardship, they lacked confidence in private property. The lack of confidence with a system of private property may be at the source of the belief that private residential property poses a threat to the traditional territories, particularly when considering resource extraction projects. An explanation of private property with an example such as the *Nisga'a Landholding Transition Act* may allow the Babine to engage with new ideas regarding their land tenure. Considering the strong traditional values that the leaders expressed, the Lake Babine Nation could explore tools to restrict the sale of land in a way that could prevent the ownership of land by individuals and corporations that threaten their stewardship values. Most importantly, the leaders and members of the Lake Babine Nation need reassurance that they have control over their land tenure on the individual and national levels. Without a meaningful discussion, that cannot happen.

The goals of this research are twofold – to initiate a meaningful conversation about land tenure values among the members and leaders of Lake Babine Nation, and to offer recommendations for implementing the interviewees' expressed values. This involves creating policy that enforces accountability to the traditional territories and engages the Lake Babine Nation membership. The concern regarding a lack of collective decision-making in the Lake Babine Nation should be urgently addressed in their land tenure policy, and the

following five recommendations are presented for consideration in determining land tenure policy in the Lake Babine Nation.

Survey values. Survey the members of the Lake Babine Nation specifically on their land tenure values. The breadth of this thesis is relatively small, and does not include the voice of the Lake Babine Nation as a whole. The leadership of the Lake Babine Nation should initiate a survey to determine whether or not the land tenure values of membership align with the leadership of the Lake Babine Nation.

Communication guideline. Develop a communication guideline for the relationship between Hereditary Chiefs, the Chief and Council, and band employees as it concerns the traditional territories, both for the present Indian Act governance structure and any future governance structures. Most interviewees mentioned that a lack of communication between the Chief and Council and the Hereditary Chiefs was a potential cause of conflict over the traditional territories. A communication guideline would define the roles and responsibilities of each group.

Land tenure management tools. With the LBN Treaty Office, explore traditional and western tools for managing land tenure. These tools could include applying traditional stewardship stakeholders, such as clan or house (sub-clan) bodies, to modern land-use planning tools such as zoning. Determine which are useful within the land tenure values of the Lake Babine Nation, and which are not. Incorporate them into future self-government agreements. The LBN Treaty Office should be the organization exploring issues relating to land tenure. They should also be obligated to share this information with all the political bodies in the Lake Babine Nation. The information is applicable to more than treaty, and

could prove useful in the long term. Research into land tenure should always be compared to the stated land tenure values of the Lake Babine Nation.

Address fee simple property. Between leaders, determine to what extent fee simple residential property is acceptable within the land stewardship values of the Lake Babine Nation. Engage with the membership of the Lake Babine Nation on what this means. There is a lack of understanding about fee simple residential property, and it does not threaten the traditional territories as many expect it might. Clarify using examples such as the *Nisga'a Landholding Transition Act*, and determine whether the members of the Lake Babine Nation are comfortable with that type of policy.

Collective responsibility. Make collective responsibility and collective decision making a priority. When defining land tenure policy, consider whether or not it enhances Lake Babine Nation members' duty to engage with land tenure and the traditional territories. Leadership, particularly the Hereditary Chiefs, expressed frustration with a lack of collective decision-making. Many politically involved members likely feel the same. Without an emphasis on collective decision-making in every decision about land tenure, the Lake Babine Nation loses an opportunity to engage the Nation on this pressing matter.

There is some urgency in these recommendations. First, the Incremental Treaty Agreement (ITA) has been signed which provides an avenue for the Lake Babine Nation to express their land tenure values. The Lake Babine Nation has not expressly defined their land tenure position, and without a clear stance on the issue, the vacuum could be filled with the prescribed policy and values of the Federal and Provincial Governments. In the long-term future, comprehensive claims, such as treaty, could be products of the same policy. Secondly,

problems in governance and land tenure in the Lake Babine Nation appear to be due to the undefined roles of the intersecting political bodies. If the leadership of the Lake Babine Nation does not take this opportunity to address the need for direction, frustration with governance in the Lake Babine Nation will only grow. The recommendations that are made in this thesis are only possible because of the Nation's strong adherence to traditional land values and universal beliefs about collective decision-making. The leaders of the Lake Babine Nation are committed to ownership and stewardship values that reflect their traditional roots, and they could also use the modern and traditional land management tools at their disposal to actively engage their band members in the ongoing governance of the traditional territories.

Reflections

Doing research with the Lake Babine Nation has been a personally rewarding experience. I have been struck by the eagerness that the leaders and members have shown for conducting research that benefits their community. This thesis was first conceived after doing an internship at the LBNTD, where I met many Lake Babine Nation employees and leaders. Their openness to new and rewarding research relationships was inspiring, and the Lake Babine Nation became an exciting and meaningful place for me to work. More importantly, I re-engaged with a community that I had not been a part of since my childhood. From family friends to pre-school teachers, my roots were exposed in a way that I had never expected.

Early on in my work my thesis committee had recommended that I focus on the values of the leadership of the Lake Babine Nation rather than trying to define the values of an entire Nation in ten interviews. The advice would prove both useful and rewarding. The

interviewees are invested and serious about their self-governing future, and they actively envision their land tenure structures. Work like this had not been done in the Lake Babine Nation before, and all of the interviewees were curious about the upcoming results. The leadership core of the Lake Babine Nation is a part of an intensely dynamic and changing political environment, and they want to be involved in crafting its future for the betterment of the Lake Babine Nation.

More than anything, my thesis provided a lens to see that the values of the Lake Babine Nation are astonishingly resilient. The last decade in Canada has provided a flood of discussion about applying western land tenure on reserves and in self-government agreements, which had led me to believe that it would saturate my results. This was not the case. The leaders of the Lake Babine Nation provided a clear mandate that land tenure in the Lake Babine Nation should be evaluated according to traditional land stewardship values, and that private property was a secondary issue. Only when traditional stewardship practices were incorporated into the governance structure of the Lake Babine Nation could western land tenure be considered. The leaders believe that their members not only share these values, but that they want to be more involved in the care of the traditional territories. The reserve system of land tenure has relegated many members from being actively involved in the stewardship of the traditional territories, and it has been profoundly disempowering. The leaders of the Lake Babine Nation wish to change that.

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